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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-292

THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA, a Religious Body, et al.,

Petitioners,

vs.

DIONISIJE MILIVOJEVICH, et al.,

Respondents.

PETITIONERS' BRIEF

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TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	4
Nature of the Action	4
I. Synopsis Of Relevant Events Before 1963	6
A. The Organization of the Mother Church	6
B. The Organization and Administration of the American-Canadian Diocese	7
C. The Property-Holding Corporations	10
D. The Complaints Against Dionisije	11
E. Dionisije's Recognition of the Authority of the Holy Assembly and Holy Synod	12
F. Dionisije's Failure to Attend Holy Assembly Meetings	15
G. Events Leading up to the Diocesan Reorganization	16
H. The 1962 Investigating Committee	17
II. The Disciplinary Proceedings Against Dionisije	18
A. The Suspension of Dionisije	18
B. Dionisije's Defiance and Rebellion	19
C. The Removal of Dionisije as Bishop	21

D. Dionisije's Indictment, Trial and Defrockment 22

E. The Continued Rebellion 24

III. The History Of This Litigation 25

SUMMARY OF ARGUMENT 30

ARGUMENT 34

I.

The Decision Of The Supreme Court Of Illinois, In Refusing To Follow The Decisions Of The Holy Assembly And The Holy Synod On Matters Of Clerical Discipline And Church Organization, Offends The First And Fourteenth Amendments 34

A. Under This Court's Prior Decisions, The Supreme Court of Illinois Was Required To Accept As Conclusive The Decisions Of The Holy Assembly And The Holy Synod As The Highest Judicatory Authorities Of A Hierarchical Church 34

B. The Decisions Of The Lower Courts And The Evidence In The Record Clearly Establish That The Serbian Orthodox Church Is A Hierarchical Church 37

C. The So-Called Gonzalez "Fraud, Collusion Or Arbitrariness" Exception Does Not Permit Civil Courts To Engage In Detailed Procedural And Substantive Review Of Decisions Of Church Tribunals 42

D. The Illinois Supreme Court's Resort To "Arbitrariness" To Sanction Its Detailed Administrative Review Of Decisions Of Church Tribu-

nals Offends The Constitution And Should Be Disapproved By This Court 45

E. The Alternative "Formal Title" Approach To Resolving Disputes Over Church Property Is Not Applicable Here 55

II.

Under Constitutional Principles, As Expressed In This Court's Opinions, The Illinois Supreme Court Impermissibly Intruded Into Internal Church Matters As To Each Of The Three Issues On Which It Refused To Recognize The Decisions Of The Mother Church 59

A. The Constitution Required The Illinois Supreme Court To Recognize The Mother Church's Decisions In Removing and Defrocking Dionisije 60

B. The Illinois Supreme Court Exceeded Its Authority By Declaring That The Suspension Of Dionisije And The Appointment Of Firmilian As Administrator Had Expired 64

C. The Illinois Supreme Court's Invalidation Of The Diocesan Reorganization Is Another Impermissible Intrusion Into Church Affairs. Respondents' Charges Of A "Property-Grab" Are False 66

1. The issue of the validity of the diocesan reorganization is an internal church dispute in which the civil courts should defer to the decision of the Church tribunals 66

The Subordination of the Diocese to the Mother Church 66

The Diocesan Constitution 67
The Diocesan Bishop 68
The Mother Church Constitution 69
2. There is no evidence that the Diocesan reorganization was fraudulent or involved a plot to "grab" Diocesan assets. Contrary to Respondents' claims, this is not a property case 72

CONCLUSION 80

APPENDIX I 1a
The Suspension of Dionisije 1a
a. Synopsis of Relevant Events 1a
b. Applicable Internal Church Regulations .. 2a
The Removal of Dionisije 5a
a. Synopsis of Relevant Events 5a
b. Applicable Internal Church Regulations .. 7a
The Indictment of Dionisije 11a
a. Synopsis of Relevant Events 11a
b. Applicable Internal Church Regulations .. 12a
Dionisije's Trial and Defrockment 14a
a. Synopsis of Relevant Events 14a
b. Applicable Internal Church Regulations .. 15a

APPENDIX II 23a
Synopsis of Relevant Events Concerning the Diocesan Reorganization 23a
Applicable Church Regulations Governing the Diocesan Reorganization 25a
a. Respondents' Arguments 25a
b. Applicable Provisions of the Mother Church Constitution 27a
c. Applicable Provisions of the Diocesan Constitution 30a

TABLE OF AUTHORITIES

Cases

Bouldin v. Alexander, 82 U.S. (15 Wall) 131 (1872) 36

Dragelevich v. Rajsich, 24 Ohio App. 2d 59, 263 N.E. 2d 778 (1970) 39

Draskovich v. Pasalich, 280 N.E. 2d 69 (Ind. App. 1972), reh. den. 285 N.E. 2d 830 (1972), cert. denied, 414 U.S. 976 (1973) 39

Gonzalez v. Roman Catholic Archbishop, 280 U.S. 1 (1929) 27, 31, 34, 37, 43

Kedroff v. Saint Nicholas Cathedral of the Russian Orthodox Church, 344 U.S. 94 (1952) 6, 31, 34, 36, 37, 39, 43-44, 49, 79

Kreshik v. Saint Nicholas Cathedral of the Russian Orthodox Church, 363 U.S. 190 (1960) 34, 37

Maryland and Virginia Eldership of the Churches of God v. Churches of God at Sharpsburg, 396 U.S. 367 (1970) 34, 44, 55, 56, 58

Mirkovich v. Bozanich (No. 109/1964, Supreme Court of Ontario, Canada, 4/20/64) 39

Presbyterian Church in the United States v. Eastern Heights Presbyterian Church, 225 Ga. 259, 167 S.E. 2d 658 (1969), *cert. den.* 396 U.S. 1041 (1970) 56

Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969) 31, 34, 44, 46, 55, 58, 72

Serbian Eastern Orthodox Diocese v. Ocokoljich, 72 Ill. App. 2d 444, 219 N.E. 2d 343 (2nd Dist. 1966) 1, 26, 38

Serbian Eastern Orthodox Congregation v. Serbian Eastern Orthodox Congregation, 106 N.J. Super. 22, 254 A.2d 119 (1969), cert. denied, 54 N.J. 516, 257 A. 2d 113 (1969), cert. denied, 397 U.S. 961 (1970) reh. den. 397 U.S. 1058 (1970) 39

Watson v. Jones, 80 U.S. (13 Wall.) 679 (1871) 34, 35, 36, 43, 51, 52, 53, 54

Other Authorities

Ill. Rev. Stat., ch. 32, §46(a)-46(h) (currently *id.* §§ 176-186) 11, 41

Ill. Rev. Stat., ch. 32, §§ 187-188 ..... 11, 41

Note, "Judicial Intervention in Disputes over the Use of Church Property," 75 Harv. L.Rev. 1142, 1175-1177 (1962) 35

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PETITIONERS' BRIEF

OPINIONS BELOW

The Opinion of the Supreme Court of Illinois is reported at 60 Ill. 2d 477 and 328 N.E.2d 268 (A. 1800). The Trial Court's Memorandum Opinion was entered December 28, 1972 and its Final Decree on April 30, 1973 (A. 1767). The opinion of the Illinois Appellate Court in an earlier appeal is reported *sub. nom. Serbian Eastern Orthodox Diocese* v. *Ocokoljich* at 72 Ill. App. 2d 444 and 219 N.E.2d 343 (2nd Dist. 1966) (A. 10).

JURISDICTION

The opinion and judgment of the Supreme Court of Illinois, originally entered on March 24, 1975, were modified on May 29, 1975, upon denial of cross-petitions for rehearing. Petitioners filed their petition for certiorari on August 26, 1975. This Court granted certiorari on October 20, 1975. This Court's jurisdiction is invoked under 28 U.S.C. §1257 (3).

QUESTIONS PRESENTED

1. In the absence of fraud or collusion, is it consistent with the First and Fourteenth Amendments to the United States Constitution for a State Court, in reviewing the procedures followed by the highest authorities of a hierarchical church in removing and defrocking a Diocesan Bishop of that church:

(a) to construe the internal regulations and procedures of that church differently from the construction given by the highest church authorities and, on the basis thereof;

(b) to invalidate the removal and defrockment; and

(c) to reinstate the former Bishop as a Bishop of the church and as Diocesan Bishop?

2. Whether, in the absence of fraud or collusion, a State Court may, consistent with the First and Fourteenth Amendments to the United States Constitution, invalidate the removal and defrockment of a Bishop by the highest authorities of a hierarchical church, on the grounds that the removal and defrockment procedures employed were

erroneous under the State Court's interpretation of internal church laws and regulations and were therefore "arbitrary"?

3. Whether a State Court may, consistent with the First and Fourteenth Amendments to the United States Constitution, weigh documents and testimony of witnesses relating to internal regulations and procedures of a hierarchical church, interpret that internal church law in contradiction to the interpretation made by the highest ecclesiastical authorities of that church and, on that basis, invalidate the removal and defrockment of a Bishop of that church?

4. Whether a State court may, consistent with the First and Fourteenth Amendments to the United States Constitution, determine that the suspension of a Diocesan Bishop and the appointment of an administrator for the Diocese by the highest ecclesiastical authorities of a hierarchical church have expired, when the suspension and appointment are deemed continuing by those ecclesiastical authorities pending final disposition of litigation commenced in a State court by the suspended bishop?

5. Whether a State court may, consistent with the First and Fourteenth Amendments to the United States Constitution, invalidate the reorganization of a diocese by the highest authorities of a hierarchical church, based upon the State court's opinion, contrary to that of those church authorities, that the reorganization violates internal church laws and regulations?

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved in this case are:

1. The First Amendment to the United States Constitution, which provides in pertinent part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

2. The Fourteenth Amendment to the United States Constitution, which provides in pertinent part:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws . . ."

STATEMENT OF THE CASE

Nature of the Action

In 1963, the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church (hereinafter the "Mother Church"), the legitimate and highest ecclesiastical authorities of that hierarchical church, suspended and ultimately removed Dionisije Milivojevich (hereinafter "Dionisije"), as Bishop of the American-Canadian Diocese of that Church. The Mother Church authorities appointed Bishop Firmilian Ocokoljich (hereinafter "Firmilian") as Administrator of the Diocese and thereafter reorganized the Diocese into three Dioceses. In 1964, they defrocked Dionisije as a Bishop and cleric of the Mother Church.

Dionisije refused to participate in the investigatory, removal and defrockment proceedings which followed his suspension. Instead, Dionisije and a minority faction of the members of the Diocese refused to recognize the proceedings and decisions of the Holy Assembly, attempted to secede from the Mother Church, and refused to accept the Administrator. Furthermore, they asked the Illinois courts to uphold both the validity of their opposition and secession, and Dionisije's unilateral refusal to obey Church law as interpreted by its highest judicatories.

After more than eleven years of litigation, the Supreme Court of Illinois substantially reversed the decree of the trial court and in effect attempted to reinstate Dionisije as a Bishop of the Mother Church and as Diocesan Bishop.

Although no fraud or collusion was claimed by Respondents on appeal or found by the Supreme Court of Illinois, that Court held that the proceedings of the Holy Assembly of Bishops respecting Dionisije were procedurally and substantively defective under the internal regulations and procedures of the Serbian Orthodox Church and were therefore "arbitrary" and invalid. In reaching this conclusion, the Illinois Court undertook to construe the internal regulations of the Mother Church, to adopt the construction of church law espoused by Respondents' witness (a defrocked former Mother Church cleric), and to reject that of the Holy Assembly of Bishops and Petitioners' five expert witnesses. The Supreme Court of Illinois also invalidated both the Diocesan reorganization and Respondents' attempted secession.

Petitioners sought review of the decision of the Supreme Court of Illinois which refused to recognize the decisions of the Holy Assembly on the grounds that the actions of that Court constituted an improper judicial interference in religious affairs and an infringement of the constitutional guarantees of the First and Fourteenth Amendments.

I.

SYNOPSIS OF RELEVANT EVENTS BEFORE 1963

A. The Organization of the Mother Church

The Serbian Orthodox Church (the "Mother Church") is an ancient, autocephalous, hierarchical church* that came into existence in the beginning of the Thirteenth Century. (A. 351).** The Seat of the Church is the Patriarchate in Belgrade, Yugoslavia (PX 68, R. 3031, A. 1141). A substantial majority of church members reside in Yugoslavia, but there are also hundreds of thousands of church members in the United States and other countries.

The Mother Church is episcopal, meaning that it is governed by its Bishops (PX 68, R. 3031, A. 1141). It is undisputed that the highest legislative, judicial, ecclesiastical and administrative authority of the church is the Holy Assembly of Bishops, a group consisting of all Diocesan Bishops (PX 68, R. 3031, A. 1155-56). The highest executive body of the church is the Holy Synod of Bishops, composed of the Patriarch as President and four Diocesan Bishops selected by the Holy Assembly (PX 68, R. 3031, A. 1156). The legitimacy of the Holy Assembly and the Holy

* This Court has stated that "[h]ierarchical churches may be defined as (1) those organized as a body with other churches (2) having similar faith and doctrine (3) with a common ruling convocation or ecclesiastical head." *Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94, 110 (1952).

** Record references herein are to the Appendix ("A"). Where exhibits are cited, they are noted as PX (Plaintiffs' Exhibit) and DX (Defendants' Exhibit) and are referenced according to the pages of the Record ("R") at which they were offered, and the pages of the Appendix at which they appear. References to other Briefs indicate the party filing that brief and the court in which that brief was filed. For example, Respondents' Brief in Opposition to the Petition for Certiorari will hereinafter be referred to as "Resp. Cert. Brief".

Synod as the highest church judicatories is not disputed. It is conceded that the exclusive power to appoint, suspend, remove and defrock Diocesan Bishops is vested in the Holy Assembly and the Holy Synod (PX 68, R. 3031, A. 1160-1161, 1163-1164, 1181).

The Mother Church is governed according to the following sources of Law: Holy Scriptures; Holy Tradition; Rules of the Ecumenical Councils; the Regional Councils; The Holy Apostles; the Holy Faiths of the Church; and (since 1931) by the Mother Church Constitution which was adopted in that year (PX 68, R. 3031, A. 1139, 1136). The Mother Church also adopted a "penal code" in 1962 (A. 197; PX 69, R. 3036, A. 1243). The Respondents have premised a number of arguments upon the provisions of the Mother Church Constitution and penal code. The pertinent provisions are discussed at appropriate portions of the Argument and of the Appendices to this brief.

B. The Organization and Administration of the American-Canadian Diocese

In 1921, the Holy Assembly of Bishops created the Serbian Eastern Orthodox Diocese for the United States of America and Canada (hereinafter the "American/Canadian Diocese") for the Serbian Orthodox Church people who had emigrated from Serbia to the United States (A. 272; PX 24, 25, R. 2941-42, A. 1011-1015).* The action was

* Respondents have argued that certain events prior to 1921 are significant; meetings of priests and laymen in 1913 and 1916 (DX 30, 31, A. 1573, 1518); supervision of the Serbian Orthodox congregations in the United States by the Russian Orthodox Church prior to 1920 (A. 358-59); and the dispatch by the Russian Church of Father Mardary, a Serb, to attempt to organize an independent Serbian Diocese in the United States in 1917 (DX 33, A. 1598-1600).

(footnote continued on following page)

taken after receipt of the report of a commission which had been appointed by the Holy Assembly to investigate the situation regarding the approximately 26 congregations then existing and the need for a diocese in the United States. (DX 255, A. 1762-64; A. 276).

Since 1921, the American/Canadian Diocese has been governed by Diocesan bishops appointed by the Holy Assembly or by administrators appointed by the Holy Synod. Each was chosen without consultation with officials of the Diocese. Until the disputed events of 1963, each of these bishops and administrators was a Yugoslav citizen at the time of his initial appointment and each came from Yugoslavia to the United States by reason of that appointment. Each one who did not die in office was removed or recalled by the Holy Assembly or the Holy Synod.

The names, positions, terms of office and previous assignments of the Diocesan Bishops and administrators of the American/Canadian Diocese up to 1963 are shown in the following chart:

However, these unsuccessful efforts to create a Serbian church organization have no significance in characterizing the relationship between the Mother Church and the American-Canadian Diocese after 1921. The proceedings relating to the creation of the American/Canadian Diocese in 1921 do not refer to any pre-existing diocese, or to any negotiations, compacts or agreements with any pre-existing church organization in the United States or Canada. The resolution creating the Diocese recites only the intention of the Mother Church to settle any controversy over common property which might arise between the Serbian Church and the Russian Orthodox Church (PX 25, R. 2941-42, A.1014).

The history of the early years of the Diocese shows the Administrator organizing diocesan institutions (such as the Ecclesiastical Court and Sabors) for the first time (DX 37, A. 1602-04; DX 49, A. 1605-06). There is no indication in this early history of a continuation of an organizational structure created earlier.

Name	Position	Term of Office	Previous Assignment
Nicholai	Administrator	1922-1923	Bishop, Ochrid, Yugoslavia
Mardary*	Administrator	1922-1925	Dean of Monastery
	Bishop	1925-1935	Rakovica, Yugo.
Varnava	Administrator	1935-36	Patriarch, Belgrade, Yugo.
Irinej	Administrator	1936-38	Bishop, Dalmatia, Yugo.
Damaskin	Bishop	1938-39	Bishop, Mukacevo-Prjasero, Yugo.
Dionisije	Bishop	1939-1963	Vicar Bishop in Yugo.**

From 1921 to 1927, there was nothing to distinguish the organization of the American/Canadian Diocese from the organization of any of the other dioceses of the Mother Church. In 1927, Bishop Mardary summoned the First Diocesan Church Assembly, or Sabor. It adopted a draft diocesan constitution. That draft constitution was submitted to the Holy Assembly for approval. (A. 276-77; DX 49, A. 1605-06.) It was approved and went into effect in 1928 after changes were made by the Holy Assembly to

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* Father Mardary had been in the United States earlier (1917). He had been sent by the Russian Orthodox Church to make an attempt (which was unsuccessful) to organize an independent Serbian diocese. This effort resulted from concern by the Russian Orthodox Church about the German occupation of Serbia in World War I. (DX 33, A. 1598-1600.)

** A. 277-78; PX 26, R. 2941-42, A. 1015-16; PX 27, R. 2942, A. 1016-17; PX 32, R. 2949, 1073-74; DX 77, R. 6158, A. 1622; PX 35, R. 2950, A. 1077.
Prior to his consecration as a Vicar Bishop in 1938, Dionisije had served as a priest of the Mother Church in Yugoslavia from 1926 to 1938. He first came to the United States in 1940. (A. 446, 448.)

provide for appointment of the diocesan bishop solely by the Holy Assembly and to require Holy Assembly approval for any amendment to the Diocesan Constitution (DX 51, A. 1608-12; PX 28, R. 2942, A. 1017-19). Until 1963, all proposed amendments to the Constitution were duly submitted to the Holy Assembly for approval (PX 31, R. 2949, A. 1071-73). Respondents have based a number of arguments on provisions of this diocesan constitution. The specific provisions are referred to in the Argument and the Appendices to this Brief.

C. The Property-Holding Corporations

Over the years, a number of not-for-profit corporations were organized by Bishops of the American/Canadian Diocese. In each case, the circumstances indicated that the corporate entities were created for the purpose of holding title to Diocesan real estate.

The first Illinois not-for-profit corporation was incorporated on September 28, 1927. On November 9, 1927, Bishop Mardary conveyed to the new corporation thirty acres of real estate in Libertyville, Illinois, to which he had previously held title, first as sole owner individually, and later as trustee. (PX 91, R. 3091, A. 1394-98; PX 130, R. 3169, 1450-51; PX 131, R. 3170, 1452-56.)* Subsequently, the charter of the 1927 corporation was allowed to lapse.

In 1935, Bishop Mardary, whose health was then failing, organized another Illinois not-for-profit corporation. This corporation was organized pursuant to provisions of the Illinois Religious Corporations Act (Ill. Rev. Stat. Ch. 32

* In 1926, Bishop Mardary placed the property in trust for the "Serbian Orphanage of St. Sava Monastery." The trust provided that if the orphanage was discontinued then, at the Bishop's discretion, the property would be used for the benefit of the Diocese (PX 131, R. 3170, A. 1452-53).

§46(a)-46(h), cited on A. 1400) (currently *id.*, §§176-186) which govern the incorporation of religious societies which are subordinate parts of a larger church organization (see Ill. Rev. Stat. ch. 32 §§187-188) (PX 92, R. 3091, A. 1399-1402). The 1935 corporation never adopted any bylaws and never elected any officers or directors. After their initial appointment, the trustees of the 1935 corporation never held any meetings (A. 296-98). The 1935 corporation is a defendant in this case. The Illinois Supreme Court concluded, solely because the corporation name and the name of the Diocese were the same, that this secular 1935 not-for-profit corporation was synonymous with the Diocese itself, rejecting the contrary findings of the trial court as against "the manifest weight of the evidence" (A. 1802).*

In 1945, the defendant not-for-profit monastery corporation, the Monastery of St. Sava, was organized and the Libertyville property was transferred to that corporation (PX 129, R. 3169, A. 1447-50; PX 136, A. 1459-63). Subsequently, other secular property-holding corporations were created and real estate was conveyed to each to be held under the direct supervision of the Diocesan Bishop; in New York, 1942 (PX 93, R. 3092, A. 1403-04); in California, 1962 (PX 108, R. 3103, A. 1418-23); and in Pennsylvania, 1966 (PX 150, A. 1463-65).

D. The Complaints Against Dionisije

For a number of years prior to 1963, the Holy Synod had received a continuing flow of complaints challenging Dionisije's administration of the Diocese and his fitness

* The Illinois Supreme Court's opinion states that the factual recitation in the opinion "amply discloses [the] basis" for this determination (A. 1802). But an examination of the opinion reveals no facts upon which the finding of the identity of the diocese and the corporation could have been based.

to serve as a Bishop. It is undisputed that all but one or two of these complaints emanated from persons in the United States and Canada. After an initial period in which the complaints were forwarded to Dionisije for his response (DX 119-126, R. 6353-63; DX 134-39, R. 6378-6390; PX 53, R. 2972, A. 1105-06), the Holy Synod adopted a practice of filing the complaints in the archives and notifying Dionisije of their receipt (DX 139).

The trial court, over Petitioners' objections, permitted Respondents to introduce considerable evidence concerning the merits of these complaints. However, neither the trial court nor the Illinois Supreme Court made any findings concerning the validity of the charges. The trial court ultimately concluded the evidence was irrelevant (A. 1777).

For purposes of the appeal, these charges have significance only to demonstrate that the Holy Assembly and the Holy Synod had a reasonable basis for commencing disciplinary proceedings against Dionisije in 1963. This conclusion follows from three undisputed facts: (1) that virtually all of the charges emanated from the United States and Canada (there is no evidence in support of Dionisije's earlier claims that the complaints were instigated from either government or church authorities in Yugoslavia); (2) that a substantial number of complaints continued to be received throughout Dionisije's tenure as Bishop; and (3) that the complaints involved serious charges of misconduct by Dionisije as to both personal and pecuniary matters.

E. Dionisije's Recognition of the Authority of the Holy Assembly and Holy Synod

At the time of Dionisije's elevation to the office of Bishop, he prepared in his own hand and signed his Episcopal-

Hierarchical Oath swearing that he would ". . . always be obedient to the Most Holy Assembly . . ." (PX 37, R. 2954, A. 1078, 1083), and that he would attend meetings of the Holy Assembly (PX 37, R. 2954, A. 1078, 1085). The oath continued:

> ". . . Should I transgress against whatever I promised here, or should I be disobedient to the Divine Ordinances and Order of the Eastern Orthodox Church, or the Most Holy Assembly (of Bishops) I, personally, will become a schismatic and should I make the Diocese entrusted to me in any manner to become disobedient to the Most Holy Assembly (of Bishops), may I, in that case, be defrocked of my rank and divested of the (episcopal) authority without any excuse or gainsay, and (may I) become an alien to the heavenly gift which is being given unto me by the Holy Spirit through the Consecration of the Laying of Hands." (PX 37, R. 2954, A. 1088.)

Dionisije accepted the authority of the Mother Church over matters relating to the discipline of clerics in the Diocese. On numerous occasions, he submitted to the Holy Synod, for final approval, in accordance with the Diocesan Constitution (PX 30, R. 2949, A. 1039-40), judgments issued by the Diocesan Ecclesiastical Court (DX 99, R. 6239, A. 1626-29; DX 101, R. 6242, A. 1629-32; DX 113, R. 6308, A. 1632-33).

In matters pertaining to the appointment of religious officials or the creation of religious organizations or associations in the Diocese, Dionisije always advised the Mother Church and, where necessary, requested its approval. Examples are the appointment of Firmilian as his Episcopal Deputy on May 10, 1955 (PX 61, R. 3008, A. 1122-23); approval of the by-laws of the priest pension fund and the by-laws of the Serbian Charity Home of St. Sava (the Shadeland, Pennsylvania property) (A. 1094-95); and ap-

proval of the by-laws of the clergy association of the Diocese (PX 49, R. 2966, A. 1102). Dionisije also recognized the need for approval by the Holy Assembly of amendments to the Diocesan Constitution (PX 144, p. 70).

Twice in the month preceding his suspension, Dionisije publicly reaffirmed the hierarchical authority of the Mother Church and proclaimed that only the Holy Assembly and the Holy Synod had authority to judge the charges of misconduct made against him.

Thus, on April 17, 1963, Dionisije summoned and presided at a meeting of the Diocesan Executive Board (A. 620-21). Under the auspices of Dionisije, a Resolution (PX 85, R. 3063, A. 1375-77) was unanimously adopted professing *inter alia* that Dionisije and the Executive Board:

(1) stood for spiritual, hierarchical and canonical unity with the Mother Church;

(2) adhered to the proposition that the Serbian Orthodox Church was one church, indivisible and self-governing; and

(3) recognized that the alleged faults and charges against Dionisije could be judged only by the Holy Synod and Holy Assembly as they were the only competent authorities to make decisions with respect to ecclesiastical matters of that type.

On May 8 and 9, 1963, one day prior to his suspension, at the annual meeting of the Clergy Association of the Diocese, attended by Dionisije and 31 other clerics, a Resolution (PX 86, R. 2727, A. 1378-82) was unanimously adopted which stated, *inter alia,* that the Clergy Association:

(1) stood for spiritual, hierarchical and canonical unity with the Mother Church in Yugoslavia and that

the identical stand had been announced on April 17 by the Diocesan Executive Board as well as at prior meetings of the Association;

(2) denounced any suggestion that the religious body (Diocese) in this country was autonomous;

(3) condemned any assertions that the Mother Church was imposing her will upon the religious body in this country at the direction of the present communistic authorities in Yugoslavia; and

(4) resolved that the alleged faults and transgressions of Dionisije of which they had heard and read could only be judged by the Holy Assembly and Holy Synod as set forth in the April 17, 1963 statement of the Diocesan Executive Board, and that the Holy Assembly and Holy Synod would in due course render their decisions and decrees with respect to these charges.

Dionisije was the first to sign and then all those assembled signed (PX 86, R. 2727, A. 1381-82).*

F. Dionisije's Failure to Attend Holy Assembly Meetings

Although Dionisije's Oath (pp. 12-13, *supra*) required him to attend the annual meetings of the Holy Assembly, he never attended a single meeting after he came to the United States in 1940. The record abounds with Dionisije's

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* At the trial, Dionisije testified that he signed the resolution in blank and later renounced his signature (A. 621-22). Father Brkich, who was the presiding officer at the Association meeting, testified, as did numerous other clerics without one dissent, that Dionisije made corrections in the Resolution in his own handwriting and was the first to sign it (A. 692-93, 711; R. 10000-10012, 10050-53, 10151-10157, 10298-10304, 10309-13, 10326-28, 10977-10981, 11069-70, 11149-50).

vague excuses. For example, he excused himself on the ground of "ill health" in 1951, 1952, 1953 and 1963 (PX 40, R. 2959, A. 1091; PX 41, R. 2962, A. 1092; PX 45, R. 2962, 1096; PX 54B, 2987-88, A. 1107), a "multitude of business" in 1959 (PX 48, R. 2962, A. 1100), a "heavy work schedule" in 1960 (PX 50, R. 2966, A. 1103), and his "diocesan duties" in 1962 (PX 56, R. 2996-97, A. 1113).

In 1962, the year before his suspension, Dionisije ignored three personal requests by the Patriarch and by Metropolitan Damaskin (March 2, March 27, April 20) that he attend the May 22, 1962 meeting of the Holy Assembly (DX 142, 143, 144, R. 6475-78, A. 1634-37) and absented himself on the excuse of "diocesan duties" (PX 56, R. 2996-97).

G. Events Leading up to the Diocesan Reorganization

Over a period of time, Dionisije complained to the Holy Assembly that the size and growth of the American/Canadian Diocese required that it be served by more than one Bishop. During 1962, Dionisije wrote to the Holy Synod asking for the appointment of bishops to serve under his supervision (PX 84I, R. 3143, A. 1353; PX 58, R. 2996-97, A. 1118). Dionisije sent a delegation under Father Brkich to the May, 1962 meeting of the Holy Assembly to urge the adoption of Dionisije's reorganization proposals.* (A. 240). In Dionisije's annual report to the Holy Assembly dated September 25, 1962, he reported that for administrative

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* Dionisije instructed the delegation to advise the Holy Assembly that Dionisije's candidates for assistant bishops were three American Serbian Church clerics, Firmilian, Gregory and Stefan (A. 270). These were the very individuals who were appointed by the Holy Assembly in 1963 and whose status has been contested by Dionisije ever since.

purposes, the Diocese was divided into four episcopal districts, the Midwest, the Eastern, the Western and the Canadian (PX 57, R. 2996-97, A. 1116).

During this period, Dionisije urged that the Mother Church reorganize itself to adopt the Greek "metropolitan" system so that several assistant bishops could serve under a metropolitan (PX 84I, R. 3143, A. 1353-55; PX 58, R. 2996-97, A. 1118). The Mother Church had never employed this system and did not permit one bishop to serve under the supervision of another bishop. The other alternatives under consideration by the Holy Assembly were the reorganization of the Diocese into several Dioceses (opposed by Dionisije) or the assignment of vicar bishops (responsible directly to the Patriarch) to perform certain of the Diocesan Bishop's duties in the United States and Canada. (DX 141, R. 6469; PX 218, R. 8277, A. 1681-82).

H. The 1962 Investigating Committee

On June 29, 1962, the Holy Synod appointed three clerics as a delegation to go to the United States and confer with Dionisije with respect to the accusations which had been made against him and to study the proposals for reorganization of the American/Canadian Diocese (A. 187; PX 73, R. 3048, A. 1279-81). The delegation remained in the United States for 88 days, traveling extensively, visiting various Serbian Orthodox parishes and discussing the proposals for reorganization and the complaints against Dionisije (A. 187-92; PX 195A, A. 1482). The committee's report recommended the assignment of vicar bishops to the United States and Canada and the appointment of a commission to investigate the accusations made against Dionisije (PX 195A, A. 1533-34).

II.

THE DISCIPLINARY PROCEEDINGS AGAINST DIONISIJE

The disciplinary proceedings regarding Dionisije centered around three events. First, on May 10, 1963, disciplinary proceedings against Dionisije were commenced and he was suspended pending the outcome of those proceedings. Second, after Dionisije had refused to accept his suspension or to cooperate with the investigating commission, and had publicly denounced, insulted, and defied the Church, he was released or removed as diocesan bishop on July 27, 1963. Third, after he had refused to answer an indictment sent to him by the Mother Church, the Holy Assembly defrocked him on March 5, 1964.

A. The Suspension of Dionisije

The Holy Assembly of Bishops in its morning session on May 10, 1963 unanimously recommended that the Holy Synod institute disciplinary proceedings against Dionisije (A. 167; PX 2, R. 2931, A. 902-04).

Pursuant to the recommendation of the Holy Assembly, the Holy Synod suspended Dionisije and appointed Firmilian Ocokoljich ("Firmilian"), Dionisije's chief episcopal deputy since 1955, as Administrator of the American/Canadian Diocese, pending disposition of the charges against Dionisije (A. 167; PX 1, R. 2931, A. 901-02).

In its afternoon session on May 10, the Holy Assembly, resolving the various proposals for the assignment of additional bishops to reflect the growth of the Church in the United States and Canada, reorganized the American/Canadian Diocese into three Dioceses, appointing the suspended Dionisije as Bishop of one of the three Dioceses.

The boundaries of the three dioceses generally coincided with those of the Episcopal Districts previously created by Dionisije. The Holy Assembly left the fixing of exact boundaries and other organizational and administrative matters to be determined by the officials of the American/Canadian Diocese. (A. 167-68; PX 4, R. 2931-33, A. 908-910.)

B. Dionisije's Defiance and Rebellion

Dionisije's immediate and persistent reaction was to refuse to accept the decisions and actions of the Holy Assembly, to refuse to participate in the proceedings relating to the charges against him, and to call publicly for rebellion against and secession from the Mother Church.

On May 25, 1963, Dionisije prepared and mailed an acrimonious circular to all American/Canadian Diocesan bodies, stating that he refused to recognize any of the actions of the Holy Assembly and the Holy Synod—including his suspension, the appointment of Firmilian as Administrator, and the reorganization of the Diocese into three Dioceses (A. 245-55; PX 74, R. 2755, A. 1281-88). He also issued a press release on May 27 stating that he would not recognize his suspension and that he would litigate that suspension in the civil courts of the United States (PX 84K, R. 3141-43).

In addition, he issued a circular on June 3, addressed to the Patriarch, the Holy Assembly, the Holy Synod, all clergy, congregations, Diocesan committees, and all Serbians in North America, which reaffirmed his flat refusal to recognize the decisions of the Holy Assembly and the Holy Synod concerning his suspension and his removal from the administration of the Diocese (PX 71, R. 3048, A. 1271-77).

Furthermore, although he was under suspension, Dionisije, in open defiance of the Holy Assembly and Church

law, continued to officiate as Bishop, and refused to turn the administration of the Diocese over to Firmilian, who had been designated as Administrator by the Holy Synod. (A. 317-18; PX 75, R. 3053, A. 1289-90; PX 77, R. 3053, A. 1307). In this connection, Dionisije wrote to Firmilian on May 30 stating that he would not surrender his duties and that he no longer recognized the decisions of the Holy Assembly and Holy Synod, charging them to be "communistic." (PX 120, R. 2846, A. 1440-41).

After a meeting of the Diocesan Council on June 6 at which Dionisije repeated his defiance and refused to turn over the administration of the diocese to Firmilian, Dionisije purported to discharge Firmilian (his Episcopal Deputy) and two of his Vicars General* because of their loyalty to the Mother Church (A. 618; PX 77, R. 3053, A. 1309; PX 80, R. 3008, A. 1321).

On June 13, 1963, the Holy Synod appointed a delegation of two Bishops and the Secretary of the Holy Synod to come to America to investigate the charges against Dionisije. Dionisije reacted by demanding in June 28 and July 5 letters that he be given all accusations against him in writing, so that he could sue his accusers in the civil courts. In the same letters, he refused to accord hospitality to this delegation of his fellow Bishops, refused to permit them to meet in the See of the Diocese, and announced that he would neither recognize nor attend any hearings conducted by the delegation. (A. 632-36; PX 14, R. 2932-33, A. 928; PX 79, R. 3083, A. 1313; DX 258, A. 1765.)

* Each Vicar General was the chief cleric of one of the Episcopal Districts. One of these Vicars General was Father Brkich, whom Dionisije had selected to head the delegation sent to the meeting of the Holy Assembly in 1962 (A. 240-270). Dionisije dismissed the third and last Vicar General in August of 1963 (A. 601-02; PX 113A, R. 3107, A. 1425).

Dionisije stridently reiterated his position on July 5, 1963, at a meeting between the delegation and Dionisije and certain of his followers in a local restaurant selected by Dionisije, after he turned the delegation away from the Monastery (the See of the Diocese). Dionisije stated that he did not recognize his suspension or the right of the Holy Synod to try him. When the delegation complained to him about his May 25 circular and his May 27 press release, he stated that he stood by all of his previous statements. In view of Dionisije's position, the delegation advised him that the Holy Synod would appoint a Bishop as court prosecutor, who would prepare an indictment which would be forwarded to Dionisije for answer. (A. 212-15; PX 82, R. 3060, A. 1324; DX 150, R. 6553, A. 1640; DX 152, A. 1646; DX 241, A. 1719.)*

Dionisije again repeated his defiance in a letter to the Patriarch on July 11 and in a circular letter to all parishes in the Diocese on July 15 (DX 150, R. 6553, A. 1640; PX 88, R. 3085, A. 1383).

C. The Removal of Dionisije as Bishop

On the report and recommendation of the delegation, which detailed Dionisije's open defiance and rebellion, the

* Bishops Visarion and Hrzostom had brought with them all of the complaints and accusations against Dionisije received by the Holy Synod. In view of Dionisije's flat refusal to recognize the authority of the Holy Assembly and Holy Synod and his threat to sue in the civil courts, however, they did not discuss the complaints and accusations with Dionisije. Dionisije testified that the Bishops told him that they did not need to conduct further investigation because "my refusal to answer them that's enough" (A. 215-16, 492). Two of the members of the delegation nevertheless remained in the United States and conducted a further investigation of the charges (PX 197A, A. 1535). After a public statement about the July 5 meeting, the remainder of the delegation returned to Yugoslavia to report (A. 215).

Holy Assembly removed Dionisije as Bishop at a special meeting held on July 26-27, 1963 (PX 8, R. 2931-33, A. 919-23). The minutes of the Holy Assembly meeting and the Patriarch's letter of July 29 to Dionisije advising him of the action of the Holy Assembly demonstrate: (1) that the action relating to Dionisije was based solely upon his acts of defiance and rebellion subsequent to May 10, 1963; and (2) that the Holy Assembly deposed Dionisije because he had violated his oath and under Article 104 of the Mother Church Constitution had lost certain of the qualifications required of a bishop (PX 11, R. 2933, A. 925; DX 249, A. 1735, 1736-40).

Dionisije thereafter continued his defiance of church authority by broadcasting a circular (September 20) and by calling and presiding over (in violation of church law) two illegal Sabors or Church Councils (August 6-9, November 12-14), at which Dionisije and his followers purported to amend the Diocesan Constitution so as to make it autonomous and purported to secede from the Mother Church (PX 90, R. 3090; DX 240, A. 1703; PX 59, R. 2996-97, A. 1120-22; PX 84X, R. 3191-92, A. 1365; PX 84CC, A. 1369-75).

D. Dionisije's Indictment, Trial and Defrockment

On October 18, 1963, the Holy Synod forwarded to Dionisije a formal written indictment against him, seeking Dionisije's response (PX 16, R. 2932-33, A. 930-81; PX 84R, p. 99, R. 3149). On November 18, 1963, Dionisije wrote to the Holy Synod, demanding that verified copies of all reports and complaints referred to in the indictment be sent to him, and that he be allowed a six-month extension from December 1 within which to respond to the indictment (PX 19, R. 2933, A. 985).

The Holy Synod granted Dionisije an extension to mid-January. Dionisije's request for verified copies of all charges was denied on the ground that the charges were described in the indictment, that additional details were evidentiary in nature, and that there was no legal or canonical basis for forwarding such material to an accused Bishop. (DX 243, A. 1727; PX 20, R. 2933, A. 987-88.)

Dionisije then refused to answer the indictment. (Telegram of January 13, 1964, PX 84V, R. 3152; letter of January 25, 1964; PX 84W, R. 3153, A. 1360-64). As in his prior letters and public statements, Dionisije attacked the Patriarch, Holy Assembly and Holy Synod as schismatic, pro-Communist, atheistic, and heretical.

On February 25, the Holy Synod declared itself unable to proceed further with the case against Dionisije because of his refusal to participate, and referred the matter to the Holy Assembly (DX 254, A. 1754, 1758-59).

Because he refused to respond to or otherwise participate in the proceedings, the Holy Assembly tried Dionisije as a default matter on March 5, 1964 (DX 254, A. 1754). On that day, the indictment was amended (without further notice to the defaulted Dionisije) to include charges based upon the open and admitted acts of rebellion and secession which Dionisije had committed at the illegal November 13-14, 1973 Sabor in declaring the Diocese separated from the Mother Church and attempting to create a non-canonical hierarchy (DX 254, A. 1754, 1758-60; PX 21, R. 2933, A. 1004).

The Holy Assembly unanimously voted to defrock Dionisije. In particular, the Holy Assembly determined that Dionisije committed the following "ecclesiastical-canonical transgressions" (PX 21, R. 2933, A. 995-1004):

1. He had refused to participate before the official investigating commission appointed by the Holy Synod at the direction of the Holy Assembly;

2. He had officiated in church ceremonies and performed the duties of a Diocesan Bishop despite his suspension on May 10, 1963 and his removal on July 27, 1963;

3. He had proclaimed that the Diocese was autonomous and attempted to separate it from the hierarchy of the Mother Church;

4. He had accepted clerics who did not have canonical releases or were under suspension, permitting them to perform church ceremonies, and entrusted them with parochial duties;

5. He had ordained priests and bestowed ecclesiastical ranks of honor on persons who under the canons of the Serbian Church were without qualifications; and

6. He had committed wrongdoings of a material nature and conducted himself in a manner unbecoming to his priestly rank and position.*

E. The Continued Rebellion

Dionisije and his followers have persisted in their rebellion. However, a majority of the church congregations and communicants in the United States and Canada have remained loyal to the Mother Church. During the trial Petitioners introduced evidence that 44 out of the 72 parishes

* The first three grounds were based on public acts of Dionisije or upon his press releases or letters to the Patriarch and Holy Synod. The facts relating to these three charges are not now nor have they ever been disputed by Respondents.

in the United States and Canada had remained faithful to the Mother Church (A. 509-13).

Dionisije and his minority faction have maintained possession for 12 years, *pendente lite,* of the Diocesan assets. These include the See of the Diocesan Bishop at Libertyville, Illinois, and monasteries, cemeteries, and homes for the aged located in Libertyville, Illinois; Shadeland, Pennsylvania; and Jackson, California.* Importantly, insofar as the issues in this litigation relate incidentally to property rights, they concern solely the diocesan property held for the benefit of all Serbian Orthodox people in the United States and Canada—not the church buildings and other property of individual church congregations.

III.

THE HISTORY OF THIS LITIGATION

On May 27, 1963, before the investigating committee had been appointed or the indictment returned, Dionisije issued a press release (PX 84K, R. 3141-43) stating that he would not recognize his suspension, and that he would vigorously litigate the suspension in the civil courts of the United States. Acting upon his threat, Dionisije commenced this action in the Circuit Court of Lake County, Illinois on July 26, 1963, asking that the Bishops appointed by the Holy Assembly be enjoined from interfering with his ad-

* During this period Dionisije has barred clergymen loyal to the Mother Church from conducting graveside services at the St. Sava Cemetery (PX 109, R. 3103, A. 1424); cancelled the pension of a priest loyal to the Mother Church (A. 281-82; PX 98, R. 3095, A. 1407); and threatened the clergy and church congregations with "legal consequences" if they did not acknowledge his authority (PX 96, R. 3094, A. 1404-06).

The general statements in Respondents' briefs asserting nondiscrimination in their administration of diocesan assets do not square with or explain this undisputed evidence.

ministration of the Diocese and that he be recognized as the true Diocesan Bishop (A. 6). The three Bishops who were appointed Bishops of the three reorganized Dioceses later filed a countercomplaint which was consolidated with Dionisije's action.

In 1964, the trial court granted summary judgment in favor of Dionisije and dismissed the countercomplaint of the three Bishops. That decision was reversed by the Illinois Appellate Court, *Serbian Eastern Orthodox Diocese* v. *Ocokoljich,* 72 Ill. App. 2d 444 (2nd Dist. 1966) (A. 10). In its initial decision, the Appellate Court flatly concluded that the suspension, removal and defrockment of Dionisije were valid and binding upon the civil courts. On rehearing, the Appellate Court reaffirmed that decision, but did accede to Respondents' insistence that they be given an opportunity to attack Dionisije's removal by proving at trial that it was a result of communist-influenced fraud, collusion or arbitrariness (A. 29-32).

The Court also held both the 1963 diocesan reorganization and Respondents' attempted secession invalid (A. 23-28). The Court concluded that the Diocesan property was not merely the property of the corporations which held title to it. All of that property, regardless of title, was held in trust for the members of the Diocese in North America (A. 19). The Appellate Court remanded the case for trial on all issues.

Following a trial of more than 100 days (which involved over 100 witnesses, more than 12,000 transcript pages, and nearly 600 multipaged exhibits), the trial court entered a Memorandum Opinion and a Final Decree (A. 1767) concluding, *inter alia,* that the challenged decisions of the Holy Assembly and the Holy Synod "were in no way tainted with fraud, collusion, or arbitrariness," and that Dionisije

had been validly and properly suspended, removed and defrocked. The trial court reached the same conclusions as the Appellate Court as to the other issues.

On March 24, 1975, the Supreme Court of Illinois issued an opinion substantially overturning many of the findings and decisions of the trial court (A. 1800). The Supreme Court of Illinois proceeded to construe the internal church constitutions of the Mother Church and of the Diocese, and the Penal Code of the Mother Church, and to weigh and evaluate the testimony of various witnesses on the disputed points of internal church law. Accepting the testimony of Respondents' only witness on ecclesiastical rules, a defrocked former cleric of the Church (Stefanovic), and rejecting or ignoring the testimony of Petitioners' five expert witnesses,* the Supreme Court of Illinois adopted a construction of the Church laws and regulations at variance with that adopted by the Holy Assembly (A. 1825). In so doing, the Court ignored the provisions of the Church Constitution, the Holy Canons and other sources of Church Law which empower the Holy Assembly to interpret canonical ecclesiastical rules and expressly make final the Holy Assembly's interpretations and decision.

On the basis of its construction of the law of the Church, the Supreme Court of Illinois found that the proceedings against Dionisije were procedurally and substantively defective, and concluded that this made those proceedings "arbitrary" and invalid within this Court's *dicta* in *Gonzalez* v. *Roman Catholic Archbishop,* 280 U.S. 1, 16 (1929). The opinion of the Illinois Supreme Court in effect pur-

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* Petitioner's witnesses included three members of the Holy Assembly of Bishops (Bishops Visarion, Nikanor, Vasilije)—one of them the author of the Church Penal Code; the Secretary of the Holy Synod (Very Rev. Mladenovich); and Dr. Meyendorff, a recognized expert in the field of ecclesiastical law.

ported to set aside the 1963 removal and the 1964 defrockment of Dionisije and purported to restore him as a Bishop of the Church, member of the Holy Assembly, and Bishop of the Diocese (A. 1826-1827).

In reaching those conclusions, the Court rejected Petitioners' contention that, in view of Dionisije's refusal to participate in the proceedings, his trial was properly conducted as a default matter under the express provisions of Article 66 and Article 70 of the Penal Code. Those articles (PX 69, R. 3036, A. 1262-63, 1264-65) provide that if one charged with a violation refuses to reply to the indictment or participate in the proceedings, he is deemed to acknowledge the charges aganst him, and subsequent proceedings will be concluded without his participation.* The Illinois Court also rejected Petitioners' argument that Dionisije's open and admitted defiance of Church authority and his secession constituted independent offenses for which he was properly removed and defrocked. Finally, the Court rejected Petitioners' arguments that the evidence demonstrated compliance with all internal church regulations.

In addition, the Court affirmed the trial court's decision invalidating the action of the Holy Assembly in reorganizing the Diocese into three Dioceses as well as Respondents' attempts to secede from the Mother Church (A. 1828, 1832-1833).

The Supreme Court of Illinois recognized that the Serbian Orthodox Church is hierarchical and episcopal, and that the decisions of the highest hierarchical church authorities are generally accepted as conclusive in disputes before the

* The Court's decision appears to ignore Article 67 of the Church Penal Code (PX 69, R. 3036, A. 1263), which provides: "The initiation of the Due Process is not bound by any formalities."

civil courts, even though civil rights are affected (A. 1824). However, the Illinois Court rejected Petitioners' contentions that the review and invalidation of the Mother Church's removal and defrockment of a Bishop and of the diocesan reorganization which had been sought by Respondents and granted by the Supreme Court of Illinois, constituted an interference with the First and Fourteenth Amendment guarantees of religious freedom and was at odds with the prior decisions of this Court.

Petitions for rehearing were filed by all parties. Petitioners specifically complained that the Court's action (in construing internal church law and rejecting the construction of that church law by the Holy Assembly, as well as the review and purported invalidation of the proceedings against Dionisije and of the diocesan reorganization) constituted an improper interference in religious affairs and an infringement of the constitutional guarantees of the First and Fourteenth Amendments.

On May 29, 1975, the Supreme Court of Illinois denied the petitions for rehearing. However, without granting rehearing or permitting argument on the issue, the Court modified its original opinion by adding two sentences which hold that the suspension of Dionisije by the Holy Synod is no longer effective.* The Court's opinion purports to have the effect of reinstating Dionisije as Diocesan Bishop (and apparently as a member of the Holy Assembly of Bishops), although the highest church authorities (the Holy Assembly of Bishops) consider him to have been suspended, removed and defrocked.

This appeal followed.

* The language added upon rehearing appears in italics at A. 1827.

SUMMARY OF ARGUMENT

The decision of the Illinois Supreme Court violates the First and Fourteenth Amendment guarantees of religious freedom as interpreted by the decisions of this Court. In order to minimize interference by civil courts in the internal affairs of hierarchical churches, this Court has held that the United States Constitution generally requires courts to accept as conclusive the decisions of the highest judicatories of those churches in internal church disputes. This rule of deferring to the internal church tribunals set up by the parties themselves is applied even in cases in which the decision on the internal church questions incidentally affects the civil or property rights of the parties.*

There is no dispute concerning the status and legitimacy of the Holy Assembly and the Holy Synod as the highest judicatories of the Serbian Orthodox Church.

It is also undisputed that the Holy Assembly and the Holy Synod possess exclusive authority to appoint, suspend, remove and defrock Diocesan Bishops.

Apparently, Respondents do challenge (or at least quibble about) the hierarchical nature of the Mother Church. But, every court that has considered the matter over the past dozen years has found the Church to be hierarchical—often using language indicating that the issue is not open to serious dispute.

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* In appropriate cases, courts may use the alternative "formal title" approach of determining ownership of religious property by studying non-religious documents, such as deeds, reverter clauses, and general state corporation laws. However, this approach is not applicable to the situation presented by the case at bar.

Furthermore, the evidence amply demonstrates that the Serbian Orthodox Church falls within this Court's definition of hierarchical churches as:

> "(1) Those organized as a body with other churches (2) having similar faith and doctrine (3) with a common ruling convocation or ecclesiastical head." *Kedroff* v. *Saint Nicholas Cathedral of the Russian Orthodox Church,* 344 U.S. 94, 110 (1952).

The Illinois Supreme Court did not follow the rule of recognizing the decisions of the church tribunals. Instead, the Illinois Court substituted its interpretation of internal church regulations for that of the Holy Assembly and set aside the action of the Mother Church in suspending, removing and defrocking a Bishop and in reorganizing one of its dioceses.

The Illinois Court based its decision upon *dicta* which appears in four of this Court's opinions, beginning with *Gonzalez* v. *Roman Catholic Archbishop,* 280 U.S. 1, 16 (1929), to the effect that hierarchical decisions need not be followed if they result from "fraud, collusion or arbitrariness." This "exception" has never formed the basis of any of this Court's decisions. Indeed, the source, purpose and content of the supposed exception have never been explored by this Court. However, this Court has made it clear that any judicial review must be "marginal" and of "the narrowest kind" and should not "inject the civil courts into substantive ecclesiastical matters." *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 450-451 (1969).

The "fraud" and "collusion" portions of the exception are not involved in this case. The Illinois Supreme Court has misapplied the "arbitrariness" language of the *Gonzales* exception. The Illinois Court viewed this Court's use

of the word "arbitrariness" as a sanction for civil courts to conduct a detailed review of internal church procedures; to substitute their own interpretations of internal church regulations for the interpretations adopted by the highest judicatories of the Church; and to conduct an administrative-type review of Church decisions.

The "arbitrariness" exception as construed by the Illinois Supreme Court is unsound and would destroy the basic constitutional principle that protects religious freedom by requiring judicial non-interference in internal church affairs. The integrity of that principle can be preserved only if civil courts are required to recognize decisions of church tribunals unless the objecting party proves fraud or collusion.

In each instance the action of the Illinois Supreme Court in overturning decisions of the Holy Assembly or Holy Synod was improper.

In the proceedings relating to Dionisije, the Illinois Supreme Court had no right to substitute its interpretation of church procedures for that adopted by the Holy Assembly. In any event, the undisputed facts concerning:

(1) Dionisije's refusal to participate in the proceedings of the Church tribunals;

(2) his action in taking the dispute to the civil courts before the procedural problems he now raises had even occurred; and

(3) his open and admitted acts of defiance, rebellion and secession against the Mother Church

amply satisfy any proper review by the civil courts of his removal and defrockment. Similarly, the Illinois Supreme Court acted improperly in substituting its judgment for that of the Holy Synod in determining that Dionisije's suspension and Firmilian's tenure as administrator had expired.

By invalidating the Holy Assembly's reorganization of the American-Canadian Diocese, the Illinois Court ignored the Holy Assembly's role as supreme interpreter of the internal church constitutional provisions relating to the relationship between the Mother Church and its Dioceses. Instead, the Illinois Court improperly substituted its own interpretation of the internal church regulations.

Respondents' contention that this case is primarily a property dispute or that it involves some attempted seizure of American property by foreigners is false and demagogic. Whatever the number of dioceses, the diocesan property will continue to be held in trust for the Serbian Orthodox Church members in North America, just as the Illinois Appellate Court recognized on the first appeal.

ARGUMENT

I.

THE DECISION OF THE SUPREME COURT OF ILLINOIS, IN REFUSING TO FOLLOW THE DECISIONS OF THE HOLY ASSEMBLY AND THE HOLY SYNOD ON MATTERS OF CLERICAL DISCIPLINE AND CHURCH ORGANIZATION, OFFENDS THE FIRST AND FOURTEENTH AMENDMENTS.

A. Under This Court's Prior Decisions, The Supreme Court of Illinois Was Required To Accept As Conclusive The Decisions Of The Holy Assembly And The Holy Synod As The Highest Judicatory Authorities Of A Hierarchical Church.

The constitutional principle that civil courts generally must accept as conclusive the decisions of the highest ecclesiastical judicatories of a hierarchical church in religious disputes (even though those disputes also involve civil and property rights) is established by the decisions of this Court in *Watson* v. *Jones,* 80 U.S. (13 Wall.) 679, 727-729 (1871), and in *Gonzalez* v. *Roman Catholic Archbishop,* 280 U.S. 1, 16 (1929), both decided without reference to any express constitutional provisions, and in *Kedroff* v. *Saint Nicholas Cathedral of the Russian Orthodox Church,* 344 U.S. 94, 113-115, 120-121 (1952) (later opinion, *sub nom. Kreshik* v. *Saint Nicholas Cathedral of the Russian Orthodox Church,* 363 U.S. 190 (1960), and *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 445-449 (1969), each of which was expressly based upon the guarantees of religious freedom set forth in the First Amendment and made applicable to the States by the Fourteenth Amendment.*

* The alternative "formal title" approach is not applicable to this case. *Cf. Maryland and Virginia Eldership of the Churches of God* v. *Churches of God at Sharpsburg,* 396 U.S. 367, 370 (1970). *See* pp. 55-59, *infra.*

In each of these cases, as in the case at bar, an individual or a schismatic religious group sought to have the civil courts determine that the church hierarchy had violated internal church laws relating to discipline, organization, or doctrine. In each case the church was hierarchical in organization and the church judicatory concededly legitimate. In each of these cases, as in the case at bar, the complainants asserted that the civil courts had jurisdiction because the church hierarchy had exceeded its powers or violated the rights of the plaintiffs under internal church rules. Yet in each of these decisions, this Court refused to enter into the thicket of ecclesiastical determinations, on the grounds that such judicial intrusion is wholly inconsistent with religious freedom and the fundamental separation between church and state.

The classic statement of the governing principle is set forth in *Watson* v. *Jones,* 80 U.S. at 727, 729:

> "In this class of cases [hierarchical churches] we think the rule of action which should govern the civil courts . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding upon them, in their application to the case before them . . ."
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> . . .
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> "It is of the essence of these religious unions, and of their right to establish tribunals for the decisions of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

* The meaning of the *Watson* rule in a case such as the one at bar is well stated in Note, "Judicial Intervention in Disputes Over the Use of Church Property", 75 Harv. L.Rev. 1142, 1175 (1962):

(footnote continued on following page)

Besides *Watson* itself, the case most closely analogous to the present controversy is *Kedroff* v. *Saint Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94 (1952). There, the bulk of the American communicants of the Russian Orthodox Church had rejected the authority and decisions of the Patriarch and Mother Church in Russia, on the grounds (which had substantial evidentiary support) that those decisions were improper under church law and tradition, and that the Mother Church was dominated by the Communist government of Russia.* This Court struck down a New York State statute recognizing the American dissenters as the true Russian Orthodox Church.

Based upon the principle of civil court recognition of hierarchical decisions, this Court then recognized the Mother Church's appointee as the legitimate Archbishop of the Archdiocese of North America and the Aleutian Islands. As such, the Patriarch's appointee was entitled to possession of the Catheral (the See of the Archdiocese) which was at issue in the litigation. Analyzing the constitutional principles applicable to the selection and removal of clergy by hierarchical churches, this Court stated (344 U.S. at 116):

> "Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part

"The third rule of *Watson* v. *Jones*, reinforced by dicta in *Bouldin* v. *Alexander*, [82 U.S. (15 Wall) 131 (1872)], puts forth a concept of very limited judicial review of the decisions of ecclesiastical adjudicatories. The court is to do no more than examine the credentials of the judicatory to see whether in fact it represents the ultimate authority within the church; if so its decision binds the court."

* In contrast, Respondents in the case at bar represent a minority faction and their earlier charges of Communist control of the Mother Church were never supported by evidence and have now been abandoned.

> of the free exercise of religion against state interference."*

This principle governs, even though in the case at bar, as in *Kedroff*, the office of Diocesan Bishop incidentally controls the right to possession of the St. Sava Monastery (the Diocesan See) and other diocesan property. *See* 344 U.S. at 110, 121, pp. 77-80 *infra*.

The fact that *Kedroff* involved the invalidation of a state statute rather than a judicial intrusion into internal church matters is not a significant distinction. After *Kedroff* was remanded, the New York State Courts determined after a trial (and again on the basis of substantial evidence) that the Russian Orthodox Church and its Patriarch were dominated by the Russian government and therefore decided that the Patriarch's appointee could not occupy the Cathedral. Summarily reversing the New York ruling in a decision particularly applicable to the interference by the Supreme Court of Illinois in the case at bar, this Court held that civil interference in internal religious matters is no more permissible if done by a court than by a legislature. *Kreshik* v. *Saint Nicholas Cathedral of the Russian Orthodox Church*, 363 U.S. 190 (1960).

B. The Decisions Of The Lower Courts And The Evidence In The Record Clearly Establish That The Serbian Orthodox Church Is A Hierarchical Church.

The only factual prerequisite to the application of the rule of the *Watson* and *Kedroff* cases to the case at bar which is disputed by Respondents is the hierarchical nature of the Serbian Orthodox Church. It is undisputed that the Holy Assembly of Bishops and the Holy Synod are legiti-

* The footnote to the quotation refers to *Gonzalez* v. *Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929). *See* pp. 42-45, *infra*.

mate and that they constitute the highest ranking organs in the Church. Furthermore, it is undisputed that the Holy Assembly and the Holy Synod have exclusive jurisdiction over the consecration, appointment, suspension, removal and defrockment of Bishops.

While Respondents apparently dispute (or at least quibble over) the hierarchical nature of the Serbian Orthodox Church (Resp. Cert. Br. 12-17), their contention is clearly unsound. The hierarchical nature of the Serbian Orthodox Church is established by the evidence in the record and the decisions of all of the lower courts which have considered the matter.

The Illinois Supreme Court, after reading Respondents' briefs and while deciding most issues in Respondents' favor, stated (A. 1824; 328 N.E. 2d at 280):

> "Plaintiffs argue and defendant Bishop [Dionisije] Milivojevich does not dispute that the Serbian Orthodox Church is a hierarchical and episcopal church."•

The trial court found that the evidence "clearly establishes the hierarchical nature of the Serbian Orthodox Church." (A. 1771, 1781)

The Illinois Appellate Court in its earlier opinion in this case noted this Court's definition of hierarchical churches and concluded:

> "We do not believe it can seriously be contended that the American Diocese is not a part of such a hierarchical structure." *Serbian Eastern Orthodox Diocese* v. *Ocokoljich*, 72 Ill. App. 2d 444, 456, 219 N.E. 2d 343 (1966) (A. 21).

• Indeed, counsel for Respondents admitted in the trial court that there is no dispute but that the American-Canadian Diocese "recognized it is part of the hierarchical structure of the Serbian Orthodox Church." (A. 385)

The same finding of the hierarchical nature of the Serbian Orthodox Church has been made repeatedly by courts in jurisdictions other than in Illinois which have considered some aspect of the Dionisije dispute. *See, e.g., Draskovich* v. *Pasalich,* 280 N.E. 2d 69, 76 (Ind. App. 1972), *reh. den.,* 285 N.E. 2d 830 (1972), *cert. denied,* 414 U.S. 976 (1973); *Serbian Eastern Orthodox Congregation* v. *Serbian Eastern Orthodox Congregation,* 106 N.J. Super. 22, 254 A. 2d 119, 121 (1969), *cert. denied,* 54 N.J. 516, 257 A.2d 113 (1969), *cert. denied,* 397 U.S. 961 (1970), *reh. den.,* 397 U.S. 1058 (1970); *Mirkovich* v. *Bozanich* (No. 109/1964, Supreme Court of Ontario, Canada, 4/20/64); *Dragelevich* v. *Rajsich,* 24 Ohio App. 2d 59, 263 N.E. 2d 778, 781 (1970).

Furthermore, the evidence in the record demonstrates the hierarchical nature of the Church. This Court in *Kedroff* v. *Saint Nicholas Cathedral of the Russian Orthodox Church,* 344 U.S. 94, 110 (1952) has defined hierarchical churches as:

> (1) "[T]hose organized as a body with other churches
> (2) having similar faith and doctrine
> (3) with a common ruling convocation or ecclesiastical head."

That definition is satisfied in the case at bar. Especially convincing is Dionisije's recognition of hierarchical authority throughout the years before his suspension on May 10, 1963. Dionisije specifically recognized the superior authority of the Holy Assembly in the oath he took upon his elevation to the office of Bishop (PX 37, R. 2954, A. 1083, 1088), in the resolutions he supported at the meeting of the Diocesan Executive Board on April 17, 1963 (PX 85, R. 3063, A. 1375), and at the annual meeting of the Clergy Association of the Diocese on May 9, 1963 (PX 86, R. 2727, A. 1378). Dionisije's recognition of that authority was also repeatedly expressed in his submissions to the Holy Synod

for final approval of judgments issued by the Diocesan Ecclesiastical Court (*e.g.* DX 99, R. 6239, A. 1626-29) and by his submission of bylaws and proposed constitutional amendments to the Mother Church. These facts are set forth in greater detail at pages 12-15, *supra.*

Furthermore, the hierarchical nature of the Church is apparent from the text of the constitutional documents and from the evidence in the record relating to the history of the Church, the American/Canadian Diocese, and the relationship between them. The Serbian Orthodox Church is episcopal, i.e., it is governed by its clerics. These clerics are organized in a hierarchical structure ranging from parish priests to the Holy Assembly of Bishops, a body consisting of all Diocesan Bishops (PX 68, R. 3031, A. 1140). The chief executive organ is the Holy Synod consisting of the Patriarch as President and four Diocesan Bishops chosen from among the members of the Holy Assembly (PX 68, A. 1156). The constitutional documents are replete with provisions concerning the hierarchical authority of the Holy Assembly and Holy Synod over the entire Church (PX 68, A. 1156, 1158-64, 1170-71, 1173, 1177, 1180-82).

The principal territorial divisions of the Church are its dioceses. (PX 68, A. 1141) Each diocese is headed by a Diocesan Bishop chosen by the Holy Assembly. (PX 68, A. 1160, 1176.) Each Bishop of the American/Canadian Diocese has been elected and appointed by the Mother Church without prior consultation with or approval by the members of the American/Canadian Diocese. Indeed, prior to 1963 each Bishop appointed by the Holy Assembly was a Yugoslav cleric. *See* pp. 8-9, *supra.*

Furthermore, the broad powers of the Bishop of the American/Canadian Diocese, who is concededly appointed only by the Holy Assembly, demonstrate the hierarchical

nature of the Church organization even within the Diocese itself. The Bishop has sole power (1) to ordain priests, (2) to consecrate new churches, and (3) to appoint the members of the Ecclesiastical Court. He can veto any decisions of the Ecclesiastical Court, the Council, and other Diocesan officials, and require reconsideration. In the event of continued disagreement between the Bishop and the other Diocesan authorities, the issue is referred to the Holy Synod of the Mother Church for resolution. The Bishop occupies the See of the Diocese and has sole authority to convene Diocesan Sabors (Assemblies). He appoints temporary priests and approves permanent priests for all churches. He resolves disputes between priests and congregations. (PX 68, A. 1178-81, 1185; PX 30, R. 1019, A. 1024, 1026, 1028, 1037, 1058, 1063.) All monastery property is also under the direct control of the Bishop, as provided by Article 156 of the Diocesan Constitution (PX 30, A. 1069).

Finally, it is significant that the officials of the American/Canadian Diocese organized the 1935 Illinois not-for-profit corporation (which respondents and the Illinois Supreme Court erroneously claim to be synonymous with the Diocese itself—though the Diocese came into existence in 1921) under a part of the Illinois Religious Corporations Act which provides for the incorporation of religious bodies under hierarchical as opposed to congregational churches. *See* Ill. Rev. Stats., ch. 32, §§ 46(a)-46(h) (currently Ill. Rev. Stat., ch. 32, §§ 176-186) (PX 92, R. 3091, A. 1399). *See also* Ill. Rev. Stats., ch. 32, §§ 187-188.

C. The So-Called Gonzalez "Fraud, Collusion Or Arbitrariness" Exception Does Not Permit Civil Courts To Engage In Detailed Procedural And Substantive Review Of Decisions Of Church Tribunals.

Despite the fact that the Illinois Supreme Court conceded the Serbian Orthodox Church to be a hierarchical Church, that Court did not accord the decisions of the Holy Assembly and the Holy Synod the recognition that this Court accorded to hierarchical decisions in the *Watson* and *Kedroff* cases, *supra*. Instead, the Illinois Supreme Court:

1. Substituted its own interpretation of internal church regulations for that of the Holy Assembly;
2. Invalidated the removal and defrockment of Dionisije and purported to reinstate him as a Diocesan Bishop and as a Bishop of the Church and member of the Holy Assembly;
3. Suggested that the suspension of Dionisije and the tenure of Firmilian as Administrator of the American/Canadian Diocese had expired, even though the Mother Church treats that tenure as continuing (in deference to the pendency of this civil case); and
4. Invalidated the action of the Holy Assembly in reorganizing the American/Canadian Diocese into three dioceses.

The Illinois Supreme Court purported to review and reverse the decisions of the Holy Assembly and Holy Synod under the so-called *Gonzalez* "fraud, collusion or arbitrariness" exception to the rule requiring recognition by civil courts of decisions by hierarchical tribunals. That action is unsound and its general acceptance by civil courts would undermine this Court's prior decisions.

The "fraud, collusion or arbitrariness" exception has been mentioned in *dicta* in several of this Court's decisions. However, this Court has never defined the "narrow" scope of review of church decisions permitted by the exception. Nor has this Court had occasion to apply the stated exception to the facts of any particular case.

There was no suggestion of the "exception" in this Court's decision in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871). It first appeared as dicta in *Gonzalez* v. *Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929), as an unexplained exception to the general rule of recognition of decisions by church tribunals. The precise language was (280 U.S. at 16-17):

> "In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established by clubs and civil associations."•

However, the opinion in *Gonzalez* made explicit that the stated exception was not in issue in that case (280 U.S. at 18):

> "There is not even a suggestion that he [the Archbishop] exercised his authority arbitrarily."

Since *Gonzalez*, the exception has been referred to in *dicta* in three of the Court's decisions but has never been applied. In the first of these decisions, *Kedroff* v. *Saint Nicholas Cathedral of Russian Orthodox Church*, 344 U.S.

• The Court cited *Watson* v. *Jones*, *supra*, and several other court decisions involving religious disputes (280 U.S. at 16). In each of the cited cases the litigation was ultimately decided in favor of the church authorities. The Court also cited several cases involving non-religious oriented clubs and civil associations in which the dispute was resolved in favor of the association (280 U.S. at 17).

94, 116 n.23 (1952), the exception was quoted in a footnote. Similarly, in *Maryland and Virginia Eldership of the Churches of God* v. *Churches of God at Sharpsburg,* 396 U.S. 367, 369 n.3 (1970), the exception was briefly referred to in a footnote to the concurring opinion.

Only in one case, *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 447, 450-51 (1969), has this Court made any exposition concerning the "fraud, collusion, or arbitrariness" exception (393 U.S. at 450-451):

> "The departure-from-doctrine approach is not susceptible of the marginal judicial involvement contemplated in *Gonzalez*. Gonzalez' rights under a will turned on a church decision, the Archbishop's, as to church law, the qualifications for the chaplaincy. It was the archbishopric, not the civil courts, which had the task of analyzing and interpreting church law in order to determine the validity of Gonzalez' claim to a chaplaincy. Thus, the civil courts could adjudicate the rights under the will without interpreting or weighing church doctrine but simply by engaging in the narrowest kind of review of a specific church decision—i.e., whether that decision resulted from fraud, collusion, or arbitrariness. Such review does not inject the civil courts into substantive ecclesiastical matters."•

Thus, the *Gonzalez* type of review must be of "the narrowest kind" and not "inject the civil courts into substantive ecclesiastical matters." This exception contemplates only strictly limited and "marginal judicial involvement."

• However, even in making these limited explanatory statements, the Court defined them as *dicta,* stating in a footnote (393 U.S. at 450 n.7):

> "We have no occasion in this case to define or discuss the precise limits of review for 'fraud, collusion, or arbitrariness' within the meaning of *Gonzalez.*"

This Court has never applied or even discussed the bases, content or limits of the "fraud, collusion, or arbitrariness" exception. Certainly this Court has never sanctioned the expansive interpretation of the *Gonzalez* exception asserted by the Supreme Court of Illinois as the basis upon which to overturn the Holy Assembly's decisions in the case at bar.

D. The Illinois Supreme Court's Resort To "Arbitrariness" To Sanction Its Detailed Administrative Review Of Decisions Of Church Tribunals Offends The Constitution And Should Be Disapproved By This Court.

The "fraud" and "collusion" portions of the *Gonzalez* exception are not involved in this case. Neither fraud nor collusion has been proved by Respondents or found to exist by any Court. Indeed, the only remotely similar allegation —Dionisije's persistent assertion prior to trial that the Church proceedings against him were instigated and controlled by the Communist government of Yugoslavia—was never supported by proof, was rejected by the trial court (A. 1776, 1784, 1789), was not advanced by Respondents in the Supreme Court of Illinois, and has been abandoned by them.

Since neither fraud nor collusion is involved in this case, there is no need to explore the role those concepts might play in collateral attacks on decisions of church tribunals in the civil courts. It is enough to say that "fraud" places some limitation upon the requirement that civil courts recognize ecclesiastical decisions in those unusual cases in which the tribunal is proved to have acted in bad faith. The details may best be left for development in some future cases involving fraud.

In any event, the concepts of "fraud" and "collusion" are fairly precise and are well calculated to limit review of

ecclesiastical decisions by civil courts to the "marginal" or "narrowest kind" of review mandated by this Court in *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 450-451 (1969) discussed *supra*. Consequently, these concepts do not involve substantial danger of infringement on constitutional guarantees.

The problem arises, in this case and potentially in many others, from the Illinois Court's expansive interpretation of "arbitrariness." As the Illinois decision shows, it is possible for a court to misinterpret "arbitrariness" in a manner which extends the judicial role in church cases far beyond the "marginal" and "narrowest kind" of review contemplated by this Court.

The Supreme Court of Illinois seized upon the use of the word "arbitrariness" in this Court's opinions as a sanction for detailed procedural and substantive review of the proceedings and decisions of church tribunals. The Illinois Court undertook to interpret disputed questions of internal Church law, rejected the interpretations of the Church's highest judicatories, and invalidated the Church's decisions as "arbitrary" because they did not conform to the Illinois Court's interpretation of the internal church regulations.

The kind of reviewing authority assumed by the Supreme Court of Illinois over church tribunals makes dangerous inroads upon the Constitutional guarantees of religious freedom and the rights of churches to regulate their own internal affairs.

The Supreme Court of Illinois appears to equate the standard of "arbitrariness" with a kind of review based on the "manifest weight of the evidence." Indeed, the Illinois Court expressly concluded that the trial court's finding that Dionisije's removal and defrockment were not the

result of arbitrariness was "contrary to the manifest weight of the evidence." (A. 1827.)

The Illinois Court treated this case as though it were reviewing the decision of an administrative agency. Indeed, the review was more strict than that generally accorded decisions of administrative agencies, since the Illinois Court did not give any weight to the expertise of the Church tribunals in matters relating to internal Church regulations. In any event, considering the strong prohibition expressed in the constitution against governmental interference in the exercise of religion, it is surely inappropriate to subject a decision of the Holy Assembly of Bishops of the Serbian Orthodox Church to the same type of review applied to the decision of a civil service commission or a zoning board.

Furthermore, the approach adopted by the Supreme Court of Illinois necessarily involved the Court in a detailed analysis and interpretation of the internal regulations and procedures of the Serbian Orthodox Church. The end result of this process was that the Court rejected the interpretation of internal church regulations made by the highest body of the Church, substituted its own interpretations, and thereby attempted to compel the Mother Church to reinstate a Bishop which it had suspended, removed, and defrocked.

The Illinois Court took this action in the face of provisions of the Mother Church Constitution giving the Holy Assembly final authority concerning the promulgation and interpretation of the constitution, the penal code and all other matters of church discipline and internal organization. Articles 57, 64 and pertinent parts of 69 of the Mother Church Constitution provide (PX 68, R. 3031, A. 1156, 1158, 1158-61):

> *Article 57.* The Holy Assembly of Bishops, as the highest hierarchical body, is legislative authority in

the matters of faith, officiation, church order (discipline) and internal organization of the Church, as well as the highest church juridical authority within its jurisdiction (Article 69 sec. 28).

Article 64. All the decisions of the Holy Assembly of Bishops of canonical and church nature, in regard to faith, officiation, church order and internal organization of the church, are valid and final.

Article 69. The Holy Assembly of Bishops, whose purpose is noted in Article 57 of this Constitution: . . .

9) interprets canonical-ecclesiastical rules, those which are general and obligatory, and particular ones, and publishes their collections; . . .

12) prescribes the ecclesiastical-judicial procedure for all Ecclesiastical Courts; . . .

26) settles disputes of jurisdiction between hierarchical and church-self governing organs;

27) ADJUDGES:

A) In first and in final instances:

a) disagreement between bishops and the Holy Synod, and between the bishops and the Patriarch;

b) canonical offenses of the Patriarch;

B) In the second and final instance:

All matters which the Holy Synod of Bishops judged in the first instance;.

The Illinois Court also acted in the face of the Holy Assembly's interpretations of canon law. As Father Meyendorff testified, the canons form a code which does "not pretend to be absolutely consistent" (A. 361-62), which must be interpreted by the Holy Assembly in a manner faithful to religious spirit (A. 362), and which forms a body of regulation akin to the Anglo-Saxon common law (A. 386). The proper interpretation of canon law ultimately rests upon the consensus of the whole body of autocephalous Orthodox churches, including the Mother Church (A. 362). Here, most importantly, there was consensus on the pro-

priety of the Holy Assembly's interpretation of canon law.* Certainly, even if it were appropriate under the Constitution, civil courts could not duplicate this consensus or develop the unique religious spirit appropriate to interpret canon law.

Under this Court's decisions and the internal regulations of the Serbian Orthodox Church, the disputed questions of procedure and constitutional interpretation which were the basis for the Illinois Supreme Court's decision are to be resolved by the Holy Assembly and Holy Synod, not by the civil courts.

This was not a case involving conceded or undisputed violations of church regulations by the hierarchical authorities. Rather, each of Respondents' complaints was based upon their disputing of the Holy Assembly's construction of church law. The Illinois Supreme Court, in adopting Respondents' positions, accepted the testimony of Respondents' single witness and rejected the testimony of Petitioners' five expert witnesses.

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* Indeed, in this case, Dionisije himself invoked Canons 9 and 17 of the 40th Ecumenical Council providing that decisions of the Holy Assembly may be subject to review by the bishops of another autocephalous church. Under these provisions, Dionisije appealed the judgment of the Holy Assembly to the Patriarchs of Moscow and Constantinople, both of whom rejected his appeal (A. 363; PX 67G, R. 3030, A. 1125; PX 67H, R. 3138, A. 1134). Thus, in this case, the consensus of the body of autocephalous Orthodox Churches was that Dionisije was properly defrocked. As Father Meyendorff testified, "the very fact that this defrockment has been recognized universally by all Orthodox Churches" is a "very practically, decisive argument" concerning the defrockment (A. 364).

Justice Frankfurter in a concurring opinion in *Kedroff* v. *Saint Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94, 125 (1952) also recognized that the State is not free to substitute its judgment for such a consensus of Orthodox Churches concerning the validity of a particular act of one church.

It is impossible to square the detailed parsing and weighing of internal church regulations found in the Illinois Court's opinion with the "marginal" and "narrowest kind" of review prescribed in this Court's decisions. Rather, the Illinois Court "injected the civil courts into substantive ecclesiastical matters"—an encroachment by secular authorities on religious liberty which is forbidden by this Court.

Respondents apparently believe that this Court's decisions requiring recognition by civil courts of decisions of church tribunals apply only to a church in which the hierarchy possesses an absolute, unfettered dictatorship and in which internal church regulations place no limitations upon the hierarchy's actions and recognize no rights of individual churches or members. They therefore argue that constitutional provisions granting a certain degree of administrative autonomy to the American-Canadian Diocese, and those prescribing procedures for clerical discipline somehow establish that the Serbian Orthodox Church is not really "hierarchical" and that this Court's decisions in the *Watson and Kedroff* cases are inapplicable (see Resp. Cert. Brief at 8-11, 12-19).

This argument misapprehends both the nature of the internal church relationships in those cases and the basis and rationale for the rule applied in this Court's decisions.

An examination of the facts stated in the decisions of this Court and of lower courts in the *Watson, Gonzalez* and *Kedroff* cases demonstrates that none involved a church in which the hierarchy possessed absolute, unfettered power over individual churches and church members.• The opin-

• The *Watson* decision involved the Presbyterian Church; the *Gonzalez* case, the Roman Catholic Church; and the *Kedroff* and *Kreshik* decisions, the Russian Orthodox Church.

ions show that in each of the churches, the powers of the hierarchy were limited by constitutions, canon law, church tradition, etc.• Each of these churches possesses, as does the Serbian Orthodox Church, a definite organization with officials and groups or entities at the church, regional and hierarchical levels.

In each case, the church officials and groups possess specific powers and duties and are subject to specific limitations. Indeed, in each case the unsuccessful schismatic parties sought to have this Court declare that the hierarchy had exceeded its powers under internal church regulations. In each case this Court properly rejected this suggestion and recognized the decision of the internal church tribunal.

Respondents have also misconceived the bases for this Court's decisions. Those decisions are not based upon an assumption that a church hierarchy has unrestricted power; that church tribunals will never err; or that church decisions will always be "correct" under internal church law.

Rather, this Court's decisions are based upon the sound conclusion that when people choose to join together in a hierarchical church and create church tribunals for the resolution of internal church disputes, it is more consonant with the constitutional guarantee of religious freedom that their choice be respected and that the decisions of those church tribunals be recognized than that unsuccessful par-

• As this Court stated in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 729: "Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with."

ties be encouraged to seek review in the civil courts on the grounds that the church tribunals have misinterpreted internal church law, exceeded their powers, or followed improper procedures.

This rationale is clearly stated in the following language from this Court's opinion in *Watson* v. *Jones,* 80 U.S. (13 Wall.) 679, 728-29 (1871):

> "The right to organize voluntary religious associations . . . and to create tribunals for the decision of controverted questions of faith . . . , and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

The logic of this rule and the danger of the detailed civil court review sanctioned by the Illinois Supreme Court is graphically illustrated by this case. From the day of his suspension, Dionisije refused to participate in the internal church proceedings arising out of the complaints against him. Before the investigation, the removal, the indictment or the trial about which he now complains, Dionisije, on May 27, 1963, issued a press release threatening to litigate his case in the civil courts. He followed up that threat by filing suit on July 26, 1963, and refused to participate in the ecclesiastical proceedings.

This conduct has not prevented him from making numerous complaints about the procedures followed by the church tribunals. Dionisije's tactic of refusing to participate before the tribunals of his own church and taking the dispute to the civil courts has been rewarded by the Illinois Supreme Court, which has purported to reinstate him as Diocesan Bishop and as a member of the Holy Assembly. It is not difficult to foresee that this example, if approved by this Court, will be used as a precedent for numerous lawsuits by schismatic and dissident church groups and individuals.

It is, of course, easy for a dissident group to assert that the decision of a church tribunal in a particular case should not be accepted because the procedure followed was improper or because the decision exceeded the tribunal's proper scope of authority under the internal regulations of the church. These defects are sometimes even described as "jurisdictional." Respondents have made this type of argument, as have the dissident groups in most of the cases involving church disputes which have reached this Court. It was erroneously accepted by the Illinois Supreme Court in the case at bar.

But the recognition of this type of "jurisdictional" exception fatally undermines the general rule of recognition of decisions of church tribunals. The fallacy of Respondents' arguments was recognized by this Court more than a century ago in *Watson* v. *Jones, supra.* There, the Court criticized the Kentucky Court of Appeals for falling into the "jurisdictional" trap. Noting that a hypothetical decision by a church tribunal on the ownership of property by individual church members or with respect to a charge of murder against a church member would properly be ignored as outside the tribunal's jurisdiction, this Court went on to state (80 U.S. (13 Wall.) at 733-34):

> "But it is a very different thing where a subject-matter of dispute, strictly and purely ecclesiastical in its character,—a matter over which the civil courts exercise no jurisdiction—a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them, —becomes the subject of its [the Church tribunal's] action. It may be said here, also, that no jurisdiction has been conferred on the tribunal to try the particular case before it, or that, in its judgment, it exceeds the powers conferred upon it, or that the laws of the church do not authorize the particular form of proceeding adopted; and, in a sense often used in the courts, all of those may be said to be questions of jurisdiction."

The Court pointed out the fallacy of this "jurisdictional" argument:

> "But it is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the *criteria* by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all the evils which we have depicted as attendant upon the doctrine of Lord Eldon, and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions."

Furthermore, as a general matter, church tribunals are more likely to reach "correct" decisions on religious matters than are the civil courts. This Court recognized this principle in *Watson* v. *Jones,* 80 U.S. (13 Wall.) 679, 729 (1871), *supra,* stating:

> "Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. . . . It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these [church] bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so."

In any event, under the First and Fourteenth Amendments, the civil courts are barred from intruding themselves into these religious questions.

We respectfully submit that, in cases in which "fraud" or "collusion" is not proved, the First and Fourteenth Amendments require that civil courts recognize and accept decisions of the highest judicatories in internal church disputes. That standard requires the reversal of the decision of the Illinois Supreme Court in the case at bar.

E. The Alternative "Formal Title" Approach To Resolving Disputes Over Church Property Is Not Applicable Here.

This Court has indicated that civil courts may, in appropriate cases, use the "formal title doctrine" to resolve disputes over church property as an alternative to the *Watson* v. *Jones* approach. *Maryland and Virginia Eldership* v. *Churches of God at Sharpsburg,* 396 U.S. 367, 370 (1970).

However, that approach is not suitable to resolve the issues in the case at bar.

The concurring opinion of Mr. Justice Brennan in the *Sharpsburg* case defines the "formal title doctrine" in the following language:

> "'[N]eutral principles of law, developed for use in all property disputes,' [*Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393

> U.S. 440, 449 (1969)], provide another means for resolving litigation over religious property. Under the 'formal title' doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws.'" *Maryland and Virginia Eldership of the Churches of God* v. *Churches of God at Sharpsburg,* 396 U.S. 367, 370 (1970).•

As Justice Brennan noted, the "neutral principles of law" language came originally from the opinion in the *Blue Hull* case. There, this Court held that the Georgia courts had decided a dispute over church property between a general church and a local church on a basis which involved an impermissible intrusion into religious matters. On remand, the Georgia Supreme Court again decided the case in favor of the local church, solely on the basis that the deeds conveying the property placed title in the local church. *Presbyterian Church in the United States* v. *Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658, 659-660 (1969), *cert. den.* 396 U.S. 1041 (1970).

The *Sharpsburg* and *Blue Hull* cases stand for the proposition that it is possible, in an appropriate case, for civil courts to decide a religious property dispute on the basis of deeds and similar title documents without an impermissible intrusion into religion. However, the opinions make clear that the civil court's opinion must be scrutinized to ensure that the decision did not in fact have the effect of an impermissible intrusion into religion or an infringement upon the church's right to govern internal church affairs.

The "formal title doctrine" cannot, consistent with the Constitution, be used to resolve the disputed issues in the case at bar. Basically, the "formal title" approach is appro-

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• Mr. Justice Brennan's concurring opinion also suggests a third possible alternative—the passage of a special statute governing church property arrangements. (396 U.S. at 370) There is no such statute in this case.

priate only for simple property disputes, similar to those presented in the *Blue Hull* and *Sharpsburg* cases. In those cases, the only issue was whether the properties of individual seceding churches belonged to the local church congregation, or to the general Church. It was undisputed in *Blue Hull* and *Sharpsburg* that the majority of each of the local congregations involved in those cases had voted to secede. The disputes in those cases could be resolved on a "formal title" basis by simple reference to the language of deeds, reverter clauses, and general state corporation laws. Neither the Respondents nor the Illinois Supreme Court have suggested that the issues in this case can be resolved by simple reference to such documents of title.

No one would seriously contend that the issues relating to the removal and defrockment of Dionisije can be resolved by the "formal title" approach. The opinion of the Illinois Supreme Court touches upon such obvious religious matters as whether Dionisije had violated his Episcopal oath; whether this alleged violation of his oath was a basis for relieving Dionisije of his post as Diocesan Bishop under Articles 104 and 111 of the Constitution of the Mother Church (A. 1815-18, 1825); the sufficiency of Dionisije's acts of (1) refusing to recognize the Mother Church's authority; (2) refusing to participate in the disciplinary proceedings; and (3) attempted secession from the Mother Church as grounds for his removal and defrockment as a Bishop (A. 1824-33).• The Illinois Supreme Court did not attempt to apply the "formal title" doctrine to the Dionisije issues, and we do not believe that Respondents seriously urge it.

• It appears that the Illinois Court gave no weight to these religious matters, although they were of vital importance to the Holy Synod and the Holy Assembly in their decisions to remove and defrock Dionisije. But a civil court cannot claim to be applying "neutral principles of law" when it invalidates the decision of a church tribunal in a disciplinary proceeding against a Bishop and ignores important religious grounds for that disciplinary action.

As we understand Respondents' argument, they contend that the "formal title" approach can be used to resolve the diocesan reorganization issue. They contend that construction of the Mother Church Constitution and the Diocesan Constitution can be analogized to the examination of deeds, reverter clauses, and state corporation statutes.

The attempted analogy is inapt. Deeds, reverter clauses, and state corporation statutes are civil laws or secular title documents. On the other hand, church constitutions are ecclesiastical documents, full of religious concepts which, along with canons, orders of church councils, tradition and other matters, govern delicate internal church relationships. The Illinois Supreme Court's detailed parsing of these religious documents on the basis that they involve only "neutral principles of law developed for use in all property disputes"• is an obvious distortion of the "formal title" doctrine and would inevitably lead the civil courts into the constitutionally forbidden area of resolving ecclesiastical issues.

If reference were made to the specific types of documents of title referred to in Justice Brennan's concurring opinion, however, those documents either support Petitioners' position directly or make the outcome depend upon the identity of the Diocesan Bishop or the identity of the trust beneficiaries. In this connection, it is, of course, significant that the officials of the American/Canadian Diocese organized the 1935 not-for-profit corporation under that part of the Illinois Religious Corporations Act providing for the incorporation of religious bodies under hierarchical as opposed to congregational churches. *See* pp. 10-11, *supra*.

• *Maryland and Virginia Eldership of the Churches of God* v. *Churches of God at Sharpsburg*, 396 U.S. 367, 370 (1970); *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969).

The title to the diocesan property is in the name of the property holding corporations. However, as the Illinois Appellate Court recognized (A. 19), that title is subject to a trust for the benefit of the church members and the Diocese. The church members are split, with the majority adhering to the Mother Church. Consequently, any decision that the beneficiaries of the trust are the Dionisije faction or that the members of that faction constitute the "Diocese" would involve the civil courts in determining the identity of the "true church"—certainly an impermissible issue for civil courts.

The principal officer of the corporations (and therefore the active trustee of the property) is the Diocesan Bishop—and his identity is in dispute, as it was in *Kedroff*.

II.

UNDER CONSTITUTIONAL PRINCIPLES, AS EXPRESSED IN THIS COURT'S OPINIONS, THE ILLINOIS SUPREME COURT IMPERMISSIBLY INTRUDED INTO INTERNAL CHURCH MATTERS AS TO EACH OF THE THREE ISSUES ON WHICH IT REFUSED TO RECOGNIZE THE DECISIONS OF THE MOTHER CHURCH.

Applying the foregoing constitutional principles to each of the three subjects on which the Illinois Supreme Court rejected the decisions of the Mother Church, it is apparent that the Illinois Court overlooked or ignored the applicable principles, applied the wrong standards, and reached impermissible results. The record also shows that, in a number of instances, the Illinois Court, while purporting merely to construe the Mother Church's internal regulations and determine whether they had been followed, actually substituted the Court's own notions of proper procedure and in effect rewrote the church's regulations. This type of judicial rewriting of church regulations is pre-

dictable if detailed civil court review of the decisions of church tribunals is sanctioned by this Court. It is another danger posed by the precedent of the Illinois Supreme Court's opinion.

A. The Constitution Required The Illinois Supreme Court To Recognize The Mother Church's Decisions In Removing And Defrocking Dionisije.

The proceedings involving Dionisije have already been discussed in some detail. The exclusive jurisdiction of the Holy Assembly and Holy Synod in disciplinary proceedings involving bishops is undisputed. The action of the Illinois Supreme Court in invalidating the proceedings of church tribunals against a bishop—an important member of the church hierarchy—is an extreme and clearly impermissible intrusion into religious affairs.

This intrusion was exacerbated by the action of the Illinois Supreme Court in substituting its own interpretation of internal church regulations for that of the Holy Assembly. The conclusion reached by the Illinois Court is particularly indefensible because it resulted from the Court's acceptance of the testimony of Respondents' one so-called "expert witness" (a defrocked former cleric) and the rejection of the testimony of five expert witnesses who testified for Petitioners. These five witnesses included three bishops of the Mother Church—one of them the author of the penal code—and a cleric of the Mother Church who had served as the Secretary of the Holy Synod for many years, each of whom came to America to testify at the trial. Petitioners' fifth expert witness was Father Meyendorff, a Ph.D, professor and recognized expert in the field of ecclesiastical law.

We do not propose to discuss in detail the procedural objections raised by Respondents with respect to the disciplinary proceedings involving Dionisije. Petitioners do not ask this Court to review the detailed evidence relating to the internal church regulations and procedures of the Serbian Eastern Orthodox Church and determine whether Petitioners and the Holy Assembly of Bishops on the one hand, or Respondents and the Supreme Court of Illinois on the other hand, were correct in their interpretation of those internal church regulations. Indeed, under this Court's decisions, that type of detailed analysis and interpretation of internal church regulations is inappropriate for any civil court—including this Court. Since we anticipate, however, that Respondents will insist on arguing these matters in detail, we have included a statement of the conflicting positions of the parties on the procedural issues as Appendix I to this brief.

There are, however, two matters relating to the Illinois Supreme Court's treatment of the proceedings against Dionisije which merit discussion in the text of this brief. The Illinois Supreme Court's refusal to give weight to these matters demonstrates the degree to which the Court imposed its own notions of proper procedure upon the parties and demonstrates the sham of the Illinois Court's contention that it was only reading and applying the Mother Church's own regulations. In addition, these undisputed matters, without more, demonstrate the propriety of Dionisije's removal and defrockment.

The most extreme example of the degree to which the Supreme Court of Illinois went in substituting its notion of proper procedure for the regulations adopted by the Church is found in the Court's treatment of Articles 66 and 70 of the Penal Code. Those articles expressly provide that if a cleric of the Mother Church charged with a violation refuses to participate in the proceedings or answer the indictment, he is deemed to have acknowledged the

charges against him, and subsequent proceedings are to be concluded without his participation (PX 69, R. 3036, A. 1262-63, 1264-65).

Despite the undisputed evidence that, from the moment of his suspension, Dionisije had refused to participate in the church proceedings, had defied and denounced the legitimate church authorities, and had taken the dispute to the civil courts, the Supreme Court of Illinois inexplicably refused to accept the use in Dionisije's case by the Holy Assembly of the default procedures prescribed in Articles 66 and 70.

Apparently, the Illinois Court concluded that Dionisije should be excused for refusing to participate in the proceedings against him because he objected to some of the procedures being followed (A. 1826). But this conclusion makes a mockery of the Illinois Court's pretense that it was only reading and applying the Mother Church's own regulations. There is no support in the testimony or exhibits for the interpretation that an accused can safely "opt out" of the church proceedings and avoid being treated as a defaulted party merely by making objections to the manner in which the proceedings are being conducted. None of the witnesses (including Respondents' alleged expert) testified to this "interpretation" of church law. Since the facts concerning Dionisije's default are uncontested, a secular court need look no further to sustain the Holy Assembly's judgment.

A second important matter is the Illinois Supreme Court's refusal to give any weight to the open and admitted ecclesiastical offenses which Dionisije committed between his suspension on May 10, 1963, and his defrockment on March 5, 1964.

During this period, Dionisije refused to accept his suspension or to turn the administration of the diocese over

to Firmilian, the Administrator appointed by the Holy Synod (*see, e.g.*, PX 120, R. 2846, A. 1440-41). He refused to participate in any hearings conducted by the investigating delegation appointed by the Holy Synod, refused to allow the delegation into the Diocesan See, and refused to recognize the authority of the delegation or of the Holy Synod (DX 152, A. 1646-48). Instead of submitting to the disciplinary authority of the Mother Church, he defied it and its highest authorities, and insisted on dragging the matter through the civil courts.

Dionisije, while under suspension, illegally purported to convene two Sabors (church councils) at which he and his followers attempted to amend the Diocesan Constitution, secede the Diocese from the Mother Church, and elect a bishop (PX 84CC, A. 1369-75). Throughout the period from May 1963 through January 1964, Dionisije repeatedly and publicly denounced the Patriarch, Holy Assembly and Holy Synod as schismatic, pro Communist, atheistic, and heretical (*see, e.g.*, PX 84W, R. 3135, A. 1360).

As the testimony of the learned bishops who were called as witnesses shows, these offenses against the Mother Church were considered to be of great importance in the Holy Assembly's removal of Dionisije as bishop on July 27, 1963 (for violation of his episcopal oath) and in the judgment of defrockment rendered on March 5, 1964 (*see, e.g.*, the testimony of Bishops Nikanor and Visarion at A. 172-173, 216-217). These matters constituted three of the six grounds stated by the Holy Assembly for the judgment of defrockment against Dionisije on March 5, 1964 (PX 21, R. 2933, A. 989).

Although these charges involved public and admitted acts of Dionisije which were important grounds for his removal and defrockment, the Illinois Supreme Court ignored them. Yet it is difficult to imagine more serious ecclesiastical offenses by a member of the highest ecclesiasti-

cal body of a hierarchical church. This situation again illustrates the fallacy of the Illinois Supreme Court's contention that it either could or did review the Dionisije proceedings on the basis of neutral principles of law or on the basis of a straightforward application of the internal rules of the Serbian Orthodox Church. These ecclesiastical offenses, which are based on public and admitted acts, suffice, without more, to sustain Dionisije's removal and defrockment.

B. The Illinois Supreme Court Exceeded Its Authority By Declaring That The Suspension Of Dionisije And The Appointment Of Firmilian As Administrator Had Expired.

Even after exercising its detailed review of internal church regulations, the Illinois Supreme Court recognized the validity of Dionisije's suspension and of the appointment of Firmilian as Administrator of the American/Canadian Diocese on May 10, 1963. However, after the filing of petitions for rehearing by all parties, the Illinois Court, without granting rehearing or permitting argument, modified its original opinion by adding two sentences. These sentences state that the suspension of Dionisije is no longer effective (A. 1827). By inference they also conclude that the appointment of Firmilian as Administrator has expired.

This decision purports to reinstate Dionisije as acting Diocesan Bishop and a Bishop of the Mother Church and member of the Holy Assembly, although the Mother Church authorities consider him to be suspended, removed and defrocked. Furthermore, the decision invalidates the continued tenure of Firmilian, the Administrator who is recognized by the Mother Church as the temporary head of the American/Canadian Diocese.

The Holy Assembly continued the suspension of Dionisije and the appointment of Firmilian as Administrator of the

American/Canadian Diocese pending final disposition of this case in deference to the American courts. What the action of the Illinois Supreme Court establishes, as a most unfortunate precedent, is that a dissident cleric may defeat his suspension and the appointment of a temporary administrator by filing and maintaining suit in a civil court and refusing, during pendency of the litigation, to recognize that suspension and the appointment of the temporary administrator.

The Illinois Supreme Court's sole basis for this far-reaching decision is that suspension is a temporary measure prior to trial and the provision of the Penal Code that "the court is obligated to make a decision within a period of one year." (A. 1827.)

The proceedings before the Church tribunals were concluded within ten months of the original suspension. Yet, the Illinois Court somehow concluded that the one-year time limit was not satisfied by the completion of church proceedings within one year. In effect, the Illinois Court gave Dionisije the benefit of the lengthy civil court proceedings he initiated. The Court cited no basis in the internal church documents or the testimony of any witness for its conclusion that the suspension does not continue throughout the civil court proceedings and any retrial required by those court proceedings. We have found none. If this decision is upheld, any suspended bishop could recover his office after a year by instituting civil court proceedings and could then retain office until the court proceedings were finally concluded.

The decision of the Illinois Supreme Court with respect to the alleged expiration of Dionisije's suspension and of the tenure of the Administrator is another example of that Court's impermissible substitution of its own notions of proper procedure for the Church regulations as interpreted by the highest judicatories of the Church.

C. The Illinois Supreme Court's Invalidation Of The Diocesan Reorganization Is Another Impermissible Intrusion Into Church Affairs. Respondents' Charges Of A "Property-Grab" Are False.

1. The issue of the validity of the diocesan reorganization is an internal church dispute in which the civil courts should defer to the decision of the Church tribunals.

In presuming to invalidate the reorganization of the American/Canadian Diocese into three dioceses, the Illinois Supreme Court impermissibly injected itself into the relationship between the Mother Church and its Dioceses. The Illinois Court also in effect designated one of two contending groups (and a minority schismatic group at that) as the "true" or "legitimate" embodiment of the American Diocese. The Court thereby excluded the majority of American Church members who are loyal to the Mother Church from any right to make use of the Diocesan facilities, such as monasteries, cemeteries and old people's homes.

The Illinois Supreme Court improperly decided a delicate religious question which should have been left to the appropriate church tribunals. Respondents' attempts to characterize the whole matter as a property dispute and their demagogic charges that the Mother Church intended to "grab" the property of the American Church (Resp. Cert. Br. at 7) are false and without foundation in the record.

The Subordination of the Diocese to the Mother Church.

In an effort to exaggerate the significance of the diocesan reorganization, Respondents mis-characterize the American/Canadian Diocese in the years before 1963 as fully autonomous with few connections with the Mother Church (Resp. Cert. Br. at 4-7, 16-17). Indeed, the "statement of the case" in Respondents' Certiorari Brief (pp. 4-7) is full

of misstatements on this subject. Respondents state that the American/Canadian Diocese existed as a unit prior to 1921 (Resp. Cert. Br. at 4-5). That is false.• They state that the Diocese is governed by its church assembly (Resp. Cert. Br. at 5) (apparently rather than being governed by the Diocesan Bishop). That is false. (PX 68, R. 3031, A. 1177, (Article 103) *see* pp. 68-69, *infra*). Respondents state that the Diocese has grown and prospered without assistance or interference from the Mother Church (Resp. Cert. Br. at 5). That is false. (*See, e.g.,* DX 113, R. 6308, A. 1094-95). They assert that Respondents represent a majority of the Serbian Orthodox congregations and "faithful" (apparently members) in the United States and Canada (Resp. Cert. Br. at 5). That is false (A. 509-13). They contend that, while the Diocesan property has been in their possession during the long pendency of this litigation, the property has been available and used by all Serbian Orthodox people regardless of whether they support or oppose Dionisije's position (Resp. Cert. Br. at 5). That is false. (*See, e.g.,* A. 1424-25.)

The Diocesan Constitution.

Since its creation by the Mother Church in 1921, the American/Canadian Diocese has always functioned as a part of the Mother Church. The Diocesan Constitution itself states in its first two articles that the Diocese is "considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate" and that generally:

> "All statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church . . . are also compulsory for the . . . Diocese. . . ." (PX 30, R. 2949, A. 1021).

Article 12 of the Diocesan Constitution provides that the Diocesan Bishop (its highest authority) may not "make any

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• *See* footnote at pp. 7-8, *supra*.

changes or innovations in the established order and work of the Church" without the prior approval of the Patriarch of the Mother Church, and adds (PX 30, R. 2949, A. 1025-26):

> "Accordingly, the Diocesan Bishop shall submit to the Serbian Patriarch, for review, all regulations which may be issued by any diocesan authority, which shall if they touch upon the sphere of internal Church administration, be subject to the approval of the Holy . . . Synod, as the highest executive church authority."•

The Diocesan Bishop.

In addition to these broad powers of the Mother Church over the Diocese, one must consider the power of supervision exercised by the Mother Church through the Diocesan Bishop. It is undisputed that the Diocesan Bishop of the American/Canadian Diocese is appointed, suspended and removed solely by the Holy Assembly and the Holy Synod. Indeed, until the 1963 appointments (which are challenged by Dionisije and his followers) all of the Bish-

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• Article 23(8) of the Diocesan Constitution (PX 30, R. 2949, A. 1029) limits the authority of the Diocesan Sabor (its "main legislative and controlling body," as stated in Article 15) to amend the Diocesan Constitution by requiring that all proposed amendments be approved by the Mother Church before they may take effect. Article 53 of the Diocesan Constitution (PX 30, R. 2949, A. 1039-40) subjects decisions by the Diocesan Ecclesiastical Court to approval by the Holy Synod of the Mother Church (decisions which include, among others, the organization, dissolution, and reorganization of parishes and congregations within the Diocese: Article 55(7) (PX 30, R. 2949, A. 1040-41). The Diocesan Bishop is also limited in his authority by Article 10 of the Diocesan Constitution (PX 30, R. 2949, A. 1023-1025), particularly requiring that he execute all canonical orders of the Holy Assembly (Article 10h), submit to the Holy Assembly an annual report of his archipastoral activities (Article 10p), and prepare, accept and appoint new priests for the Diocese according to the indicated need and with prior approval of the Ecclesiastical Court (Article 10q).

ops and Administrators of the American/Canadian Diocese were Yugloslav clerics who were appointed and sent to the United States from Yugoslavia by the Holy Assembly and the Holy Synod without any consulation with Diocesan officials.

The Diocesan Bishop has very great powers within the Diocese. He alone can ordain priests, consecrate new churches and appoint the members of the Ecclesiastical Court. He can veto any decisions of the Ecclesiastical Court, the Diocesan Council, and other Diocesan officials and require reconsideration. In the event of continued disagreement between the Bishop and the other Diocesan authorities, the issue is referred to the Holy Synod of the Mother Church for resolution. The Bishop has the right to occupy the See of the Diocese and has full authority to convene Diocesan Sabors (assemblies). He appoints priests to all parishes and resolves disputes between priests and congregations. All monastery property is under the direct control of the Bishop (PX 30, R. 2949, A. 1024, 1026, 1028, 1037, 1039, 1057-59, 1069).

Indeed, while Dionisije and his followers now argue that the Mother Church has no power or role in reorganizing the Diocese, they themselves recognized that role by repeatedly petitioning the Holy Assembly to assign them more bishops and to reorganize the Diocese under the Greek "metropolitan" system (PX 84I, R. 3143, A. 1353-55; PX 58, R. 2996-97, A. 1118-1120).

The Mother Church Constitution.

In deciding the issue of whether the Mother Church had the authority to reorganize the American/Canadian Diocese, it is necessary to consider the subordinate (yet partially autonomous) status of the Diocese. It is also necessary to consider and evaluate the history of the Church

and several Articles of the Mother Church and Diocesan Constitutions. The Mother Church Constitution contains detailed regulations of Diocesan institutions, most of which are applicable to the American/Canadian Diocese (PX 68, R. 3031, A. 1176-1196). Article 16 of the Mother Church Constitution expressly and unambiguously gives the Holy Assembly the power of "establishing, naming, liquidating [and] reorganizing" dioceses. Respondents rely upon the fact that the Mother Church Constitution lists in separate Articles the Dioceses within Yugoslavia (Article 14) and those outside Yugoslavia, and that Article 15 (which lists the American/Canadian Diocese and other Dioceses outside Yugoslavia) states that they are under the jurisdiction of the Serbian Orthodox Church in "spiritual and hierarchical aspects" but does not use the word "administrative." Respondents also rely upon Article 3 of the Diocesan Constitution which states that the Diocese "enjoys full administrative freedom" (PX 30, R. 2949, A. 1021).

Again, as in the case of the disputed questions of internal church procedure dealing with Dionisije's removal, we do not burden the Court with a detailed argument concerning these disputed questions of internal church law. For the Court's information, those arguments are set forth in Appendix II to this brief.

The crucial point is that the subordinate relation of the Diocese to the Mother Church, both historically and under the constitutional provisions, clearly demonstrates that the Holy Assembly is the tribunal intended by the Church and its members to resolve these disputed questions of interpretation.

As already noted at pp. 47-48, *supra,* Article 64 of the Mother Church Constitution provides that:

> "All the decisions of the Holy Assembly of Bishops and of the Holy Synod of Bishops of canonical and church nature, in regard to faith, officiation, church order and internal organization of the church, are valid and final" (PX 68, R. 3031, A. 1158).

Article 69 empowers the Holy Assembly to interpret canonical-ecclesiastical rules and to "settle disputes of jurisdiction by the hierarchical and church/self-governing organs" (PX 68, R. 3031, A. 1158, 1161).

These disputed issues have been decided by the Holy Assembly in favor of the validity of the Diocesan reorganization. The matter was first decided on May 10, 1963 when the Holy Assembly approved the Diocesan reorganization. The Holy Assembly again decided the matter on March 5, 1964 when it rejected and denounced the actions of the illegal Sabors convened by Dionisije which had complained about the Diocesan reorganization and had attempted to secede from the Mother Church.

The conclusion that the Mother Church has authority to reorganize the Diocese is further supported by the testimony. Bishop Visarion and the Very Reverend Mladenovich testified that the highest judicatory of the Mother Church had authority to reorganize the American/Canadian Diocese in accordance with the hierarchical powers enumerated in its own constitution (A. 202-204, 142). Bishop Visarion further testified that the consent of no other party, including the Diocesan Bishop, was required for the Holy Assembly's action to be final (A. 208-09). Father Meyendorff confirmed that the Holy Assembly is the source of legal authority for any reorganization (A. 365) and expressed the expert opinion that the Diocesan reorganization was valid under both the Mother Church and Diocesan Constitutions (A. 366).

Whatever the ultimate merits of the church dispute about the degree of autonomy of the American/Canadian Diocese, it involves internal church governmental matters at "the

very core of religion." *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 450 (1969). Under the United States Constitution and the provisions of the Mother Church and Diocesan Constitutions, the resolution of this dispute should (absent fraud) be left to the Holy Assembly—not dragged through the civil courts.

2. There is no evidence that the Diocesan reorganization was fraudulent or involved a plot to "grab" Diocesan assets. Contrary to Respondents' claims, this is not a property case.

Respondents argue that this is a "property case" and that the entire Diocese reorganization was somehow a plot by the Mother Church to "grab" the assets of the American/Canadian Diocese (Resp. Cert. Br. at 7).

This is a transparent attempt to evade and mislabel the issues.* The short answer is: *First,* there is no evidence of any plot. *Second,* there is no evidence of any intention by the Mother Church to divert any Diocesan property from the trust under which it is held—for the benefit of the Church members in North America. *Third,* there is no evidence that the Diocesan reorganization has caused or could cause any diversion of property from that trust. Indeed, the evidence is all to the contrary.

First, there is no evidence of any plot. The evidence shows that the Diocesan reorganization grew out of repeat-

* Indeed, Respondents go to the extreme of stating that the disciplinary proceedings against Dionisije were instituted and prosecuted as a subterfuge to eliminate Dionisije's opposition to the alleged "property grab." (Resp. Cert. Br. at 6-7). But there is not a shred of evidence anywhere in the record to support the claim that the disciplinary proceedings against Dionisije (which were commenced before the Diocesan reorganization) resulted from that reorganization.

ed requests from Dionisije himself and other officials of the American/Canadian Diocese for the assignment of additional bishops to North America. (*See* pp. 16-17, *supra.*) This request created problems for the Mother Church because of the fact that the Church has no system for assigning an "assistant" bishop to serve under another bishop in one Diocese.*

The Holy Assembly's decision to reorganize the American/Canadian Diocese was not made hastily or without consultation. The matter of how to assign more bishops to North America was discussed in extensive correspondence with Dionisije (PX 38, R. 2952, A. 1090; PX 84I, R. 3143, A. 1353; PX 58, R. 2996-97, A. 1115; PX 57, R. 2996-97, A. 1115). Dionisije sent a Diocesan delegation to present the problem to the May 1962 meeting of the Holy Assembly (A. 240). Then, the Holy Synod sent a delegation which spent 88 days in the United States meeting with Dionisije and visiting various Serbian Orthodox parishes (A. 186-87; PX 73, R. 3048, A. 1279-81; PX 195A, A. 1482). Furthermore, Dionisije could have discussed the matter personally with his fellow bishops. But, despite repeated personal requests from the Patriarch and the Holy Synod to attend, Dionisije absented himself from the 1962 and 1963 meetings of the Holy Assembly on the vague grounds of "diocesan duties" (1962) and "ill health" (1963) (PX 56, R. 2996-97, A. 1113; PX 54B, R. 2987-88, A. 1107).

* The evidence showed that there were three possible solutions: (1) The reorganization of the entire Mother Church to adopt the "Metropolitan" system so that a Metropolitan could be designated for North America and have several bishops serving under him (predictably, this alternative was favored by Dionisije); (2) the reorganization of the Diocese into several dioceses, each with its own bishop (opposed by Dionisije); or (3) the assignment of Vicar Bishops (responsible directly to the Patriarch rather than to the Diocesan Bishop) to perform certain of the Bishop's duties in North America (PX 84I, R. 3143, A. 1353-55; PX 58, R. 2996-97, A. 1118; DX 141, R. 6469; PX 218, R. 8277, A. 1681-82).

Following all of this, the Holy Assembly on May 10, 1963 decided to reorganize the American/Canadian Diocese into three full Dioceses—giving the North American church three votes rather than one (out of a total of 24) in the Holy Assembly. The Holy Assembly concluded that this resolution of the problem was the best solution for American Church members and for the Serbian Orthodox Church as a whole. While the merits of the decision might be debated, there is no evidence whatever that the decision resulted from any kind of "plot" or fraudulent scheme.

Second, there is no evidence of any intention or attempt by the Mother Church to divert the Diocesan assets from the trust to which they have always been dedicated, *i.e.,* a trust in favor of the Serbian Orthodox Church members in the United States and Canada.

Throughout the lengthy proceedings in this case, involving extensive document discovery, depositions both in the United States and in Yugoslavia, and a trial at which more than 100 witnesses testified, there has never been any evidence that the Mother Church intended or even considered transferring Diocesan assets out of the United States or utilizing those assets for any purpose other than the support and furtherance of the Church's work in North America. There has never been any evidence that the Mother Church intended or considered reducing the degree to which the Church in North America is autonomous and self-governing or subjecting the American Church or any property to additional control by foreigners. We challenge Respondents to point to any such evidence. None exists. No Court in the long history of this case has found any plot to divert or "grab" the property away from its trust.

Indeed, all the evidence is to the contrary. The purpose and background of the Diocesan reorganization has already been discussed. Furthermore, in effectuating the reorganization, the Mother Church chose personnel and methods which would minimize any dislocation and leave the greatest possible discretion and flexibility in the hands of members and officials of the American Church.

Prior to 1963 every Bishop or Administrator of the American/Canadian Diocese had been a Yugoslavian cleric sent to the United States after his appointment by the Mother Church. If the Mother Church had an intention of "grabbing" the Diocesan property, it presumably would have placed the new Dioceses in the hands of Yugoslavs.

Instead, the Holy Assembly appointed, first as Administrators and later as Bishops of the three Dioceses, three clerics who had been residing in the United States (Firmilian, Stefan and Gregory) (PX 7, R. 2725, A. 915-18; PX 10, R. 2933, A. 924-25; PX 12, R. 2932-33, A. 926).* Only one year before the reorganization, these same three American clergymen had been designated by Dionisije as his candidates for "Assistant Bishops." On Dionisije's recommendation, their names were submitted to the Holy Assembly by the delegation he sent to the Holy Assembly meeting in May, 1962. (A. 270). Indeed, as late as October 1962 Dionisije wrote to Firmilian stating that he wanted Firmilian to act as an assistant or Vicar Bishop and asking Firmilian whether he would accept (PX 116, R. 2542).**

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* Indeed, the Holy Assembly at first named Dionisije (though he was suspended) as the Bishop of the Middle Western American Diocese. Dionisije was removed as Bishop and replaced by Firmilian only after the repeated acts of rebellion and defiance against the Mother Church, which we have previously described. *See* pp. 19-22, *supra.*

** Firmilian had been a Mother Church cleric in the United States since 1940 when he arrived from Yugoslavia with Dionisije. He had been appointed by Dionisije as the new Secretary of the American/Canadian Diocese (A. 301). From 1955 to 1963 Firmilian served as Dionisije's Episcopal Deputy (PX 61, R. 3008, A. 1122; PX 80, R. 3057, A. 1321).

These appointments amply demonstrate the good faith of the Mother Church and the absence of any intention to "grab property." This good faith is further evidenced by the actions of the Holy Assembly with regard to the boundaries and property of the new Dioceses.

Dionisije's annual report to the Holy Assembly dated May 25, 1962 stated that the Diocese was divided into four Episcopal Districts (PX 57, R. 2996-97, A. 1116). In reorganizing the Diocese the Holy Assembly generally followed the names and boundaries of those existing Episcopal Districts.

Thus (1) the Midwest Episcopal District (plus South Africa) became the Middle Western American Diocese, (2) the Western Episcopal District (plus Central and South America) became the Western American Diocese, and (3) the Eastern and Canadian Episcopal Districts became the Eastern American/Canadian Diocese.•

With minor exceptions, the boundaries of the Dioceses were identical to the boundaries of the Episcopal Districts. Furthermore, the Holy Assembly left to the Diocesan Bishop and Diocesan Council of the American/Canadian Diocese, not only the responsibility for drawing the exact boundary lines between the Dioceses, but also all other administrative and organizational details needed to effectuate the change (PX 4, R. 2931-33, A. 908-910).

Finally, in response to questions asked of Firmilian by the self-styled "legal advisor" to the American/Canadian Diocese with regard to the Diocesan reorganization, the

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• In a letter to the Patriarch dated July 30, 1962, Dionisije had argued that Canada was not financially capable of supporting a separate Diocese (DX 141).

Holy Synod wrote to Firmilian on October 18, 1963 (PX 128, R. 3157, A. 1446) explaining:

> "1. That all the rights of the former American-Canadian Diocese, as they relate to the autonomy in the administrative sense, remain unchanged. The only exception is the forming of three dioceses and
>
> 2. That the Constitution of the former American-Canadian Diocese remains the same and that the Dioceses in America and Canada will not, in an administrative sense, (the management (*or direction*) of the properties) be managed (*or directed*) in the same manner as those in Yugoslavia."

Not only have Respondents failed to adduce any evidence of a plan by the Mother Church to "grab property" or divert that property from its trust, but the evidence affirmatively demonstrates the good faith of the Mother Church.

Third, regardless of intention, the Diocesan reorganization did not result (and could not result) in the "grabbing" of property away from the American Church or the diversion of the property from the trust to which it is dedicated.

This conclusion follows inescapably from an examination of what would have happened absent the defiance and secession of Dionisije and his followers. The administration of the American Church would have been in the hands of three clerics who had long resided in the United States and in the hands of the Diocesan Council and the Diocesan Sabors. The organization of three new Dioceses following the boundary lines of the former Episcopal Districts would have been supervised by these clerics and by the existing Diocesan Council. The title to the Diocesan property would have remained in the names of the property-holding corporations previously created (*see* pp. 10-11, *supra*) unless and until the Diocesan authorities made changes. But whatever the changes, the property would remain in trust for all mem-

bers of the Church in the United States and Canada. New Diocesan Councils (representing the Church congregations) and other Diocesan bodies would have been created for the reorganized Dioceses. No cleric, congregation or church member would have been excluded from the Dioceses or from the use and enjoyment of Diocesan property. Dionisije would have been tried according to the procedures of the Mother Church and, if found innocent, he would have been restored to active status as Bishop of the Midwestern Diocese occupying the same monastery in Libertyville, Illinois which had been his Diocesan See since 1940. Indeed, except for the formal organizational changes, the life and work of the American/Canadian Church would have gone on as before.

The only reason these events did not occur as described was the rebellion and secession of Dionisije and his followers. They have split the Serbian Orthodox Church in America and Canada into two groups. They have deprived those faithful to the Mother Church of the use and enjoyment of Diocesan property. They now seek to have this Court follow the Illinois Supreme Court and recognize their minority faction as the "true" American/Canadian Church (*see* PX 84CC, A. 1374, ¶3). It is a sham for this schismatic group to masquerade as the protectors of the American/Canadian Church against a "property grab."

As Petitioners have asserted throughout this litigation and as the Illinois Appellate Court recognized in 1966 (A. 19-20), all of the property of the Diocese is held in trust for the Serbian Orthodox people in North America. The Diocesan reorganization has never created any danger that the property would somehow be diverted from that trust. The reorganization also did not affect the title to the diocesan property. Title remains in the corporations created for the purpose of holding that title.

Indeed, the only change relating to the property which is effectuated by the reorganization is the change in the identity of the trustee. A Diocesan Bishop is the chief executive of the Diocese and, in that capacity, controls all subsidiary diocesan organizations. (*See* pp. 67-69, *supra.*) Each of the title-holding corporations involved here recognizes that fact by making the Diocesan Bishop, *ex officio,* its principal (and in some cases only) officer.

The fact that a change in bishops changes the identity of the trustees of Church property does not convert this case into a mere property dispute. Further, the fact that a determination of the ecclesiastical issues relating to Dionisije's removal and defrockment and the diocesan reorganization (matters of church discipline and government) may incidentally affect the possession of real estate does not alter the rule requiring recognition of the decisions of church tribunals.

This Court clearly recognized that truth in *Kedroff* v. *Saint Nicholas Cathedral of the Russian Orthodox Church,* 344 U.S. 94 (1952). Technically, that case was an ejectment action concerning the right to possession of St. Nicholas Cathedral in New York City. However, since that Cathedral was the seat of the Archbishop of the Russian Orthodox Church, the right of possession and occupancy depended upon whether the legitimate Archbishop was the man appointed by the hierarchy in Moscow or the person selected by the secessionist American branch of the Church. This Court recognized the validity of the appointment by the church hierarchy in Russia and was not deceived into concluding that a mere "property" case was presented just because the recognition of a particular Archbishop also determined the right to possess and use the Cathedral. This Court stated (344 U.S. at 120-121):

> "Even in those cases when the property right follows as an incident from decisions of the church custom or

law on ecclesiastical issues the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion."

Justice Frankfurter in a concurring opinion expressed the same thought in the following language, which is a complete answer to Respondents' attempts to mis-characterize this case as a "property" dispute (344 U.S. at 121, 123):

> "St. Nicholas Cathedral is not just a piece of real estate. It is no more that than is St. Patrick's Cathedral or the Cathedral of St. John the Divine. A cathedral is the seat and center of ecclesiastical authority. St. Nicholas Cathedral is an archiepiscopal see of one of the great religious organizations. What is at stake here is the power to exert religious authority. That is the essence of this controversy. It is that even though the religious authority becomes manifest and is exercised through authority over the Cathedral as the outward symbol of a religious faith. . . . A legislature is not free to vest in a schismatic head the means of acting under the authority of his old church, by affording him the religious power which the use and occupancy of St. Nicholas Cathedral make possible."

CONCLUSION

For the reasons stated above, this Court should reverse the decision of the Supreme Court of Illinois and recognize as binding and conclusive on the civil courts the decisions of the tribunals of the Mother Church which are challenged by Respondents in this litigation.

Specifically, the decision of the trial court should be affirmed insofar as it concluded that:

(1) Dionisije was validly suspended, removed and defrocked, and has not been entitled to exercise any authority as a Bishop of the Serbian Orthodox Church or as an official of the American/Canadian Diocese since May 10, 1963; and

(2) Firmilian was validly appointed as Administrator of the American/Canadian Diocese on May 10, 1963, has held that position since that date, and is fully entitled to exercise all of the powers, duties and authority of Administrator with respect to the American/Canadian Diocese.

The decision of the trial court should be reversed insofar as it concludes that the reorganization of the American/Canadian Diocese into three dioceses was invalid.

This Court should direct the trial court to enter a decree consistent with those decisions, including appropriate provisions removing Dionisije and any and all of his agents from the See of the Diocese, placing Bishop Firmilian in possession and control thereof, and assess costs against Respondents.

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APPENDIX I

Respondents contend that the procedures used in the disciplinary proceedings concerning Dionisije violated the internal regulations of the Mother Church in twelve respects (Resp. Cert. Br. at 9-11).* Respondents premise their arguments upon certain sections of the Mother Church Constitution and Penal Code.

Because of their position concerning the matters properly before this Court for decision, Petitioners have not included a detailed discussion of these alleged procedural errors in the text of their brief. However, Petitioners expect that Respondents will attempt to make their procedural arguments before this Court. Accordingly, Petitioners have prepared this Appendix I for the Court's information. The Appendix reviews chronologically the disciplinary proceedings against Dionisije, noting Respondents' arguments as they arise.

The Suspension of Dionisije

a. Synopsis of Relevant Events

On June 29, 1962, the Holy Synod appointed a delegation to go to the United States in order to confer with Dionisije concerning the continuing accusations made against him (PX 73, R. 3048, A. 1279-81; A. 187). The delegation traveled widely in the United States, visiting American parishes, conferring with Dionisije and other officials, and conduct-

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* For ease of reference, these twelve alleged procedural objections will hereinafter each be referred to by the number accorded by Respondents at 9-11 of Respondents' Certiorari Brief, as follows: Objection .....

ing interviews. The delegation's report recommended that a Commission be appointed to undertake further investigation of the complaints against Dionisije (PX 195A, A. 1532-35).

The Holy Assembly of Bishops, in its morning session on May 10, 1963, unanimously recommended that the Holy Synod institute disciplinary proceedings against Dionisije (A. 167; PX 2, R. 2931, A. 902-04). The Holy Synod then suspended Dionisije and appointed Firmilian, Dionisije's chief episcopal deputy, as Administrator of the American/Canadian Diocese (A. 167; PX 2, R. 2931, A. 901-02). In its afternoon session on May 10, the Holy Assembly reorganized the American/Canadian Diocese into three Dioceses, appointing Dionisije, though still under suspension, as Bishop of the Midwestern American Diocese with his See remaining at Libertyville, Illinois (PX 4, R. 2931-33, A. 908-910; PX 7, R. 2725, A. 915-16).

b. Applicable Internal Church Regulations

Respondents do not dispute that the Holy Synod has the power to suspend a Bishop pending disposition of the charges against him. Indeed, as Respondents conceded below (Dionisije Br., Ill. Sup. Ct. at 39), the Holy Synod in the present case ordered the temporary suspension of Dionisije and the appointment of Firmilian during the pendency of the proceedings pursuant to its role as temporary "Diocesan Bishop" (Penal Code, Art. 90, PX 69, R. 3036, A. 1270) under the powers given the Diocesan Bishop by Articles 219 and 220 of the Constitution of the Mother Church.*

* Article 219 (PX 68, R. 3031, A. 1223) provides, in pertinent part, that the diocesan bishop may act upon complaints to "suspend" a clergyman "immediately after the commencement of investigation . . . until the verdict of the church court is rendered." Article 220 (PX 68, R. 3031, A. 1224) likewise provides that "the accused may be removed from the administration by the diocesan bishop until his offenses are finally investigated and judged."

That the Holy Synod had the power to suspend Dionisije is therefore not open to doubt.* Indeed, Father Meyendorff, the only independent ecclesiastical expert who testified at the trial, noted that Dionisije's suspension is a measure taken "in the general practice of common canon laws when a person is called for trial" (A. 397).

Respondents challenge the suspension only on the theory that it was premature, asserting that Dionisije was punished prior to being advised of the charges against him (Objection 1). Respondents' position apparently is that the suspension was improper (1) because it occurred during the investigation of charges against Dionisije and before indictment, and (2) on the theory that the suspension imposed a "Church penalty" without a hearing. These charges misconstrue the facts and misinterpret Church law.

Dionisije's suspension occurred after the commencement of the investigation of the charges against him. Articles 219 and 220 of the Mother Church Constitution (PX 68, R. 3031, A. 1223-24), as well as Article 90 of the Penal Code (PX 69, R. 3036, A. 1270), all contemplate a suspension pending investigation. That is precisely what was done here. In any event, this is not a case where a bishop was suspended before any preliminary investigation of the charges

* Nor is there any doubt that the appointment of Firmilian by the Holy Synod as Administrator following the suspension of Dionisije was authorized. That appointment followed as a necessary corollary to Dionisije's suspension. The vacancy created by that suspension was required to be filled as soon as possible in accordance with Article 112 and Article 70.21 of the Mother Church Constitution (granting to the Holy Synod sole authority to appoint Administrators for Dioceses temporarily without a Bishop) (PX 68, R. 3031, A. 1182, 1163), and Articles 9 and 13 of the Diocesan Constitution (providing that in the event the seat of the Diocesan Bishop is vacated, the Holy Synod and not any Diocesan authority is to appoint an Administrator for the Diocese) (PX 30, R. 2949, A. 1023, 1026).

against him. There was in this case a pre-suspension investigation of complaints against Dionisije by the 1962 delegation.

Nor is there any merit to Respondents' complaint that Dionisije was subjected at the time of his suspension to a "Church penalty" without a hearing. Respondents apparently contend that Dionisije's suspension and subsequent appointment as Bishop of the new Midwestern American Diocese, pursuant to the Diocesan reorganization, was a transfer of Dionisije's See to "another place of service" and was therefore a penalty under Article 216(4) of the Mother Church Constitution (PX 68, R. 3031, A. 1222) and Article 55 of the Penal Code (PX 69, R. 3036, A. 1257). Of course, there is no evidence that the diocesan reorganization was intended as a penalty against Dionisije.

In any event, Dionisije's See was never transferred to another place. A bishop's See or Seat is ". . . his office or dignity, as being Bishop of a given diocese" (Black's Law Dictionary, 4th ed. 1951). It is also defined as ". . . the seat of the power or authority of a bishop; the diocesan center, hence the rank, office . . . etc. of a bishop . . ." (Webster's New Collegiate Dictionary, 1961 ed.). A diocese, by contrast, is merely the geographic territory ascribed to a particular See. A diocese is the "territorial [geographical] extent of a bishop's jurisdiction." (Black's Law Dictionary, 4th ed. 1951). Since the See of the American/Canadian Diocese was at Libertyville or Chicago and the See of the Midwestern American Diocese remained at Libertyville, with Chicago still under its jurisdiction, Dionisije's See remained the same under Article 15 (PX 68, R. 3031, A. 1143) of the Mother Church Constitution.

Furthermore, Respondents' argument that Dionisije was subjected to a "Church penalty" effectively amounts to the

contention that a diocese can never be subdivided or reorganized unless the diocesan bishop consents or is convicted of a church crime. There is no basis in the internal Church regulations for this contention. On the contrary, Article 16 of the Mother Church Constitution (PX 68, R. 3031, A. 1143) expressly provides that decisions involving the "establishing, naming, liquidating, reorganizing, and the seat of the dioceses" are made by the Holy Assembly. As Bishop Visarion testified, reorganization of a diocese is a hierarchical act (A. 202-204) and is not subject to the consent of the diocesan bishop (A. 208). Father Meyendorff and the Very Reverend Mladenovich confirmed this view (A. 366, 142). See also Appendix II, *infra*.

The Removal of Dionisije

a. Synopsis of Relevant Events

Commencing immediately after his suspension, Dionisije condemned the Patriarch, the Holy Assembly and the Holy Synod as Communists, atheists and heretics; renounced his subservience to them (in flat violation of his Bishop's oath); refused to recognize or accept any of their decisions; threatened to litigate his suspension (and to sue his accusers) in the civil courts; and announced (in advance of its arrival) that he would refuse to cooperate with the delegation of Bishops to which the Holy Synod had assigned the task of investigating the charges against him. (Communications of May 25, PX 74, R. 2755, A. 1281-82; May 27, PX 84K, R. 3141-43; May 30, PX 120, R. 2846, A. 1440-41; June 3, PX 71, R. 3048, A. 1271-77; June 28, PX 78, R. 3056, A. 1311-12; July 5, DX 258, A. 1765.)

On June 6, 1963, Dionisije refused to recognize the appointment of Firmilian as Administrator of the Diocese and summarily discharged Firmilian, two of his Vicars

General, and everyone else at the June 6 Diocesan Council meeting who continued to accept the authority of the Mother Church. He announced that only those Diocesan authorities who remained loyal to him—rather than the Mother Church—had authority to consider the charges against him (A. 317-18, 617-18; PX 75, R. 3053, A. 1289-90; PX 80, R. 3057, A. 1321-22; PX 81, R. 3058, A. 1323; PX 87, R. 3084, A. 1382-83).

When the Investigating Commission attempted to meet with Dionisije on July 5 to discuss the charges against him, Dionisije again rejected the authority of that Commission and refused to answer any oral questions or otherwise participate in any hearings. He admitted authoring the May 23 and 27 circulars, and demanded that the minutes of his meeting with the Commission include his declaration that he stood:

> ". . . by all of those things which I have written and declared concerning [the May, 1963] decisions of the Holy Assembly of Bishops" (A. 213).

On July 11, 1963, Dionisije wrote the Patriarch repeating his defiance of the May, 1963 actions of the Holy Assembly and Holy Synod, and threatening open revolt (DX 150, R. 6553, A. 1640). Four days later, Dionisije continued his defiance in a circular letter to all parishes in the Diocese (PX 88, R. 3085, A. 1383-93) attacking the Mother Church authorities as "pro-Communistic," published at large his July 11 letter to the Patriarch, and threatened to sue the Mother Church in the civil courts.

Informed by the Investigating Commission of Dionisije's conduct, the Holy Assembly held a special meeting and, on July 27, 1963, removed or released Dionisije as Bishop. The exhibits and testimony relating to the July 27 meeting show unequivocally that Dionisije was not removed as Bishop because of any of the pre-May 10 charges against him,

but solely because of his conduct following his May 10, 1963 suspension. That conduct was proved by Dionisije's own letters and circulars and by his admissions to the Investigating Commission, and is not disputed by Respondents (PX 8, R. 2931-33, A. 919-23).

b. Applicable Internal Church Regulations

Respondents make several procedural objections to Dionisije's removal. Specifically they contend that (1) Dionisije was denied copies of the complaints against him and an opportunity to confront his accusers (Objection 2); (2) Dionisije was afforded no opportunity to rebut charges by presenting witnesses in his behalf (Objection 3); (3) the Investigating Commission which recommended trial and deposition had not read the accusations against him (Objection 5); (4) Dionisije was punished before he was advised of the charges against him (Objection 1); and (5) Dionisije was denied adequate information necessary to present a defense (Objection 10). Respondents thus argue that Dionisije's removal lacked the "due process" required by the Mother Church Constitution and Articles 67 through 71 of the Penal Code (PX 69, R. 3036, A. 1263-65).•

All of these objections, however, depend upon a false assumption. Respondents assume that Dionisije was removed as Bishop and defrocked because the Holy Synod and Holy Assembly adjudicated against Dionisije the older charges of personal misconduct which had caused his suspension on May 10. Having made this basic assumption, Respondents of course argue that there was no proper procedural or evidentiary basis for that supposed adjudication.

• The "Due Process" to which Article 66 and other Articles refer is merely the procedure established by the Mother Church for investigating and deciding changes. It does not adopt by reference the concept of due process developed by American courts.

However, the record plainly demonstrates that Dionisije's removal on July 27 was based, not on the older charges, but rather upon Dionisije's public activities following his suspension.

The July 27 order removing Dionisije is quite explicit on this point (PX 8, R. 2931-33, A. 919-23). After listing numerous facts demonstrating Dionisije's defiance of the authority of the Mother Church and his complete refusal to cooperate with the Administrator and the Investigating Commission, that order concludes that Dionisije

> ". . . has trampled his episcopal oath and lost the conditions set forth in article 104, point A and D [of the Mother Church Constitution], and on the basis of article 111 is deposed from duties of a diocesan bishop. . . ."

Under Article 111 of the Mother Church Constitution Dionisije was properly deposed because he no longer was fulfilling the "conditions provided for in (Article 104)."* Dionisije's post-May 10 conduct certainly justified the Holy Assembly in concluding that he failed to comply with two conditions required under Article 104 for a bishop: (1) Dionisije had violated numerous "canonical-legal conditions foreseen for the rank of Bishop," including his violation of his oath of office (Art. 104A); (2) Dionisije was no longer engaged in "dedicated work for the good of the [Mother] Church . . ." (Art. 104D) (PX 68, R. 3031, A. 1177).

The Illinois Supreme Court expressed confusion on this point in its evaluation of the testimony. Apparently that

* Article 111 provides: "The Holy Assembly of Bishops may remove the Diocesan Bishop only by canonical verdict, or release him upon proof of incapacity, or by establishing proof of one of the conditions provided for in (Article 104), as well as justified application for pension." (PX 68, R. 3031, A. 1181).

Court was troubled by the fact that certain witnesses labeled the action of the Holy Assembly on July 27, 1963 as a "release," while others labeled it a "deposition" or a "removal."* In concerning itself with the precise label used to describe that action, however, the Illinois Supreme Court placed undue emphasis upon a nuance of language. The important factor is not the precise label used to describe the action taken by the Holy Assembly, since the terms "release", "deposition," and "removal" may all be used interchangeably to describe the fact that a bishop is no longer in charge of a diocese.** Rather, the important factor is the basis for the action of the Holy Assembly.

In this case, that basis is clear and undisputed. Dionisije confessed the requisite facts in his own letters, circulars and oral statements (PX 8, R. 2931-33, A. 919-23).

In these circumstances, Dionisije was afforded any "due process" required by the Mother Church Constitution. His claim that he was denied "basic due process" by the Investigative Commission ignores his defiance and refusal to cooperate with the Commission. The Commission had carefully brought with it to America all of the pre-May 10 complaints and accusations against Dionisije in order to discuss them with Dionisije in detail. But Dionisije flatly refused to recognize the authority of the Holy Synod and the Commission, or participate in the hearings (DX 152, A. 1647; PX 17, R. 2915, A. 982). The suggestion that the Commission should somehow have proceeded as though Dionisije's defiance had not occurred is senseless.

There is no merit to Dionisije's claim that the Commission never read the pre-May 10 accusations. The wit-

* In fact, Article 111 uses both the terms "remove" and "release," while the order of July 27, 1963 uses the term "depose."

** As Father Meyendorff testified, deposition is the removal of a Bishop from his canonical duties in a diocese (A. 389).

nesses did not so testify. Also, Respondents' assertion is belied by the undisputed fact that two members of the Commission, Bishop Chrysostom and Protodeacon Tripkovik, remained in the United States investigating these very charges (PX 197A, A. 1535-43, A. 215). In any event, this complaint, like the others, is irrelevant to the July 27 removal, since Dionisije was not removed on the basis of the pre-May 10 complaints. The basis for that removal was supplied by Dionisije's letters and circulars which the Commission read, and the admissions which Dionisije made to the Commission.

Similarly, considering Dionisije's defiance and rebellion, Dionisije was not denied Church "due process" by the Holy Synod and Holy Assembly. Under the circumstances, these judicatories were not required to provide Dionisije with a formal hearing where Dionisije could confront his accusers, present witnesses on his behalf, or introduce evidence in his defense. A hearing would have been superfluous, since the charges that served as the basis for removing Dionisije were admitted. Furthermore, the post-May 10 conduct of Dionisije amply demonstrated that Dionisije did not even recognize the authority of the Mother Church to hear and resolve these charges.

In these circumstances, Dionisije was properly defaulted under the applicable provisions of the Penal Code. As Article 66 of the Penal Code provides (PX 69, R. 3036, A. 1262-63):

> "If a person accused of a church violation does not comply with the summons, or refuses to accept the summonses and decrees of the court, or does not choose to reply to them, it shall be considered that he acknowledges the act and Due Process shall be concluded without his participation."

Article 67 of the Penal Code provides, in pertinent part (PX 69, R. 3036, A. 1263):

> "The initiation of the Due Process is not bound by any formalities."

Dionisije was removed as Bishop by the highest judicatory of his own hierarchical Church on the basis of his admitted violations of his Bishop's oath and his admitted repudiation of the hierarchical authority of the church. Indeed, the record shows that Dionisije really left the Mother Church with no alternative but to remove him.

The Indictment of Dionisije

a. Synopsis of Relevant Events

Dionisije was warned by the Investigating Commission on July 5 that his defiance and rebellion left the Mother Church no choice but to proceed against him by ecclesiastical indictment and trial (DX 152, A. 1646).

Nevertheless, Dionisije broadcast a circular like the others (September 20) and called and presided over two illegal Sabors, at which Dionisije and his followers purported to amend the Diocesan Constitution and secede from the Mother Church (PX 90, R. 3090; DX 240, A. 1703-1719; PX 59, R. 2996-97, A. 1120-22; PX 84CC, A. 1369-75). Both then and now, Dionisije not only admits but proclaims his attempt in 1963 to sever the Diocese in this country from the Mother Church.

On October 18, 1962, a formal written indictment against Dionisije was forwarded to Dionisije by the Holy Synod for his response (PX 16, R. 2932-33, A. 930-81; PX 84R, p. 99, R. 3149).* On November 18, 1962 (a few days after

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* On March 5, 1964, the indictment against Dionisije was supplemented to include the offenses openly and admittedly committed by Dionisije on November 13 and 14, 1963, in declaring the Diocese completely autonomous from the Mother Church and thereby attempting to create a non-canonical hierarchy outside the jurisdiction of the Mother Church. (DX 254, A. 1755; PX 21, R. 2933, A. 1005-06).

the so-called Sabor of the Dionisije faction had purported to secede from the Mother Church altogether), he acknowledged receipt of the indictment. He also asked the Holy Synod (1) to allow him six months from December 1, 1963, within which to reply to the indictment, and (2) to copy, verify, and send to him all of the reports, complaints and denouncements mentioned in the indictment (DX 243, A. 1727-34).

Despite Dionisije's prior conduct, which cast serious doubt on his good faith in requesting additional time, the Holy Synod nevertheless granted Dionisije an extension to mid-January (DX 243, A. 1734). The Holy Synod also denied Dionisije's request for verification and copies of the documentary material referred to in the indictment (DX 243, 1727-34; PX 20, R. 2933, A. 987-88).

b. Applicable Internal Church Regulations

Respondents challenge the indictment procedure, claiming that Dionisije was denied adequate time and information necessary to make a defense (Objection 10); that Dionisije was presented with an indictment omitting necessary information (Objection 11); and that Dionisije was charged with offenses upon which the Penal Code Statute of Limitations had expired (Objection 12).

Dionisije was afforded adequate time to respond to the indictment. In light of Dionisije's prior refusals to cooperate in the disciplinary procedings, the Holy Synod acted reasonably in setting a date three months after the indictment had been sent to Dionisije. Dionisije was granted time far in excess of the norm. Under the applicable canonical rule (Regulation 19 of the Council of Carthage), the time period in which to respond to an indictment in an ordinary case is one month, and in a special case two months. Under Article 70 of the Church Penal Code, the

time period is only 14 days (PX 21, R. 2933, A. 1006; PX 69, R. 3036, 1264).

Furthermore, the Holy Synod was mindful of the requirement in Article 219 (PX 68, R. 3031, A. 1223) of the Mother Church Constitution that the Church was obligated to complete the disciplinary proceedings against Dionisije within a period of one year. Since the proceedings commenced in May, 1963, the Holy Synod could not comply with Dionisije's request for a six-month extension from December 1, 1963, without exceeding the one-year limitation.

Nor was the indictment lacking in necessary information. In denying Dionisije's request for "verified" copies, the Holy Synod explained that the 37-page indictment itself contained a description of the material elements of each charge, and that the requested material was evidentiary in nature (DX 243, A. 1727-34; PX 20, R. 2933, A. 987-88).

Furthermore, no legal or canonical rule required the forwarding of this evidentiary material to Dionisije. On the contrary, Article 69 of the Penal Code (PX 69, R. 3036, A. 1264) requires only "exact citations of evidence" in an indictment. As Bishops Vasilije and Visarion and the Very Reverend Mladenovich testified, there is no requirement whatsoever that the indictment include that evidence (A. 664-66, 679, 687, 155). Indeed, nothing in the Penal Code envisions the submission of evidence (as opposed to an indictment) to the accused. The contrary testimony of Respondents' witness, Stefanovic, is not supported by anything but his own opinion and his conclusionary statements about practices in unidentified prior cases (A. 422-26).

Respondents' other objection to the indictment procedure also lacks merit. The charges against Dionisije were not

barred by the Penal Code Statute of Limitations. Article 60 of the Penal Code (PX 69, R. 3036, A. 1260) applies a five year Statute of Limitations only if during that time the guilty party "does not commit a new church transgression." In the case at bar, however, the complaints against Dionisije continued until his defrockment. In these circumstances, the five year Statute of Limitations does not apply.

Dionisije's Trial and Defrockment

a. Synopsis of Relevant Events

Dionisije refused to answer the indictment forwarded by the Holy Synod, asserting that it would be "absolutely useless" for him to participate in any of the proceedings against him (Telegram of January 13, 1964, PX 84V, R. 3152; letter of January 25, 1964, PX 84W, R. 3153, A. 1360-64). As he had done in his prior letters and public statements, he attacked the Patriarch, Holy Assembly and Holy Synod as schismatic, pro-Communist, atheistic and heretical.

Thereafter, on February 24, 1964, the Holy Synod determined that it had "exhausted its authority" to proceed any further in the disciplinary proceedings. The Holy Synod presented to the Holy Assembly "the case of Bishop Dionisije Milivojevich" and asked for a "final verdict" of the Holy Assembly on the case (DX 254, A. 1758; PX 21, R. 2933, A. 989-1008).

The Holy Assembly treated Dionisije's case as a default matter, since he had refused to respond to or otherwise participate in the proceedings. The Holy Assembly voted unanimously to find him guilty and to defrock him. Three of the six grounds for this judgment were the charges based upon the open and undisputed acts of defiance, rebellion and secession which Dionisije had committed subsequent to May 10, 1963 (PX 21, R. 2933, A. 989-1008).

b. Applicable Internal Church Regulations

Respondents also challenge the procedural validity of Dionisije's trial and defrockment. Respondents particularly raise three interrelated arguments: (1) that although the Holy Synod was the Court with proper jurisdiction, Dionisije was not tried by the Holy Synod (Objection 6); (2) that Dionisije was tried by the Holy Assembly of Bishops which did not have jurisdiction to try him (Objection 7); and (3) that Dionisije was denied the right of appeal guaranteed to him by both the Mother Church Constitution and the Penal Code (Objection 8). In addition, Respondents assert that persons who were disqualified participated in the judgment against Dionisije (Objection 9), and that Dionisije was convicted on accusations of which he was never apprised (Objection 4). Respondents also reiterate their claims that Dionisije was not permitted to confront his accusers (Objection 2) or present witnesses in his defense (Objection 3). These contentions again are wrong on the facts and misconstrue the governing church law.

Respondents' arguments ignore three matters which made the factual circumstances of this case unique. First, this was a proceeding against a bishop. As Bishop Vasilije testified, this was the first time in memory that the Mother Church had ever instituted a defrockment action against a bishop (A. 663, 674, 675). Not only was there no precedent for the procedures to be followed, but a reading of the Mother Church Constitution and Penal Code shows that they were drafted primarily to regulate the trials of clergy of lesser rank—not bishops.

Second, Dionisije had repeatedly defaulted and refused to participate in the proceedings against him. The Mother Church Constitution, Penal Code and canonical rules provide little detail concerning the proper disposition of a de-

fault matter. Indeed, as Respondents' own witness Stefanovic indicated in his testimony, the provisions generally assume the participation of the accused. (A. 417-418). However, Articles 66 and 70 of the Penal Code show that no full, adversary hearing is contemplated in a default case, and that the situation is to be treated like a guilty plea. Article 66 provides (PX 69, R. 3036, A. 1262):

> "If a person accused of a Church violation does not comply with the summons or refuses to accept the summonses and decrees of the Court, or does not choose to reply to them, it shall be considered that he acknowledges the act and Due Process shall be concluded without his participation."

Article 70 provides, in pertinent part (PX 69, R. 3036, A. 1264-65):

> "Should the accused not submit his reply to the indictment within that period, it shall be considered that he acknowledges the transgression and that he waives that right."

Third, as already noted, many of the most serious charges were based on undisputed facts concerning Dionisije's conduct after May 10, 1963. This conduct was proved by Dionisije's letters, circulars, admissions to the Investigating Commission, and public actions at the secessionist "Sabors." Those facts were not contested in 1963-64, and are not contested now.

These matters dispose of Dionisije's procedural objections. They obviously render frivolous his complaint that he was denied an opportunity to confront his accusers or present witnesses in his defense.*

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* These matters also answer Dionisije's complaint that he received no notice of the March 5, 1964 amendment to the indictment. Additional notice would have been useless, since he was in default and repeatedly asserted his determination to refuse to participate in the proceedings. Furthermore, the matters added by the amended indictment (the secession at the November Sabor) were public acts which are undisputed.

Dionisije has no basis to complain about the judgment of defrockment. In its judgment order (PX 21, R. 2933, A. 989-1008), the Holy Assembly recited six "ecclesiastical-canonical transgressions" as the basis for the defrockment of Dionisije. These transgressions were premised upon Dionisije's violation of a number of Church canons and constitutional provisions, including Canon 6 of the Second Ecumenical Council, Canons 14 and 15 of the Council of Antioch, and Canon 12 of the Council of Carthage. Of these six transgressions, the first three were and are based on undisputed and admitted facts.

These include (1) his refusal to cooperate with or participate in the proceedings of the July 1963 Investigating Committee; (2) his officiating at Church ceremonies and performing the duties of a Diocesan Bishop, not only after his May 10, 1963 suspension, but also after his July 27, 1963 removal; and (3) his attempt to proclaim the Diocese fully autonomous and to separate it from the Mother Church at the illegal 1963 Sabors.

As to the three remaining categories of transgressions, which comprised the charges of pre-May 10, 1963 personal misconduct against Dionisije, it need be noted only that his default is the equivalent of a guilty plea under the Penal Code. Dionisije had ample opportunity to respond to the accusations of personal misconduct within the ecclesiastical procedures of the Mother Church. He refused, however, to participate before the Investigating Commission in July, 1963, or to plead to the indictment against him. The time has now long passed for Dionisije to seek to litigate the truth of these accusations of personal misconduct.

Dionisije makes the technical argument that he should have been tried " in the first instance" by the Holy Synod with the Holy Assembly acting as an appellate body and

judging "in the second instance." At the outset, the making of this argument by Dionisije is incredible, for two reasons. First, it is incredible for Dionisije to ask a civil court to decide the internal church issue of whether he should be tried by the Holy Assembly of Bishops or by its executive arm, the Holy Synod. Second, it is incredible for Dionisije to complain about the sequence or number of church "courts" involved in proceedings in which he persistently refused to participate. In view of this refusal to participate, it made no difference to Dionisije whether he was tried by one court or several courts, and in what order. By reason of his own default and his admission of acts of defiance which constituted serious ecclesiastical offenses, these procedural distinctions could not have changed the result or caused him any prejudice.

However, since Respondents will no doubt argue the point, and since the Illinois Supreme Court apparently accepted their argument, we will proceed to consider the question in detail.

The facts in the record are quite simple. The Holy Synod initially reviewed the facts and documents, treated the case as a default matter, concluded that it had "exhausted its authority" to proceed any further in the disciplinary proceedings, and presented this case to the Holy Assembly for "final verdict." (DX 254, A. 1758). The Holy Assembly in turn, likewise viewed this case as a default matter, voted unanimously to defrock Dionisije, and entered a judgment order primarily based upon Dionisije's contumacy, defiance, and rebellion from the Mother Church (PX 21, R. 2933, A. 989-1008; DX 254, A. 1758-61).

In light of the novel nature of these disciplinary proceedings, these actions were entirely proper and fair. Like default proceedings in civil courts, they do not necessarily track in detail the procedures specified for ordinary cases.

Nevertheless, if one were to attempt to track the disciplinary proceedings in this case through the detailed provisions of the Penal Code, the actions of the Holy Synod and Holy Assembly are sustained on either of two alternative bases.

First, these disciplinary proceedings may be properly characterized as actions undertaken by the Holy Synod in the "first instance" and by the Holy Assembly in the "second instance" in the exercise of their respective jurisdictions. As provided in Article 70 of the Mother Church Constitution, the Holy Synod in this case did exactly what was required—judge Dionisije's case "in the first instance." As Bishop Visarion, the author of the Penal Code, testified, it was the Holy Synod which initially considered the information provided by Dionisije and by the Investigating Commission (A. 215-16). It was the Holy Synod which authorized the preparation of the indictment against Dionisije (PX 16, R. 2932-33, A. 930).

Carrying out its functions, the Holy Synod reviewed the report of the Investigating Commission, considered the undisputed facts and Dionisije's default and concluded, pursuant to its Act of February 25, 1964, Syn. No. 357/Min. 78 that it had "exhausted its authority" pursuant to Article 70 of the Mother Church Constitution (DX 254, A. 1758; PX 21, R. 2933, A. 1006-07). As noted above, Article 70 provides that an accused who does not reply to an indictment is considered to "acknowledge the transgression" charged. The Holy Synod thus presented the case to the Holy Assembly for "final verdict" as required by "6 rules of the II Ecumenical Council, 14 and 15 rules of the Antioch Council, rule 12 of the Cartige Council" and Article 7 (PX 68, R. 3031, A. 1139) and Article 69, Section 27 B (PX 68, R. 3031, A. 1161) of the Mother Church Constitution. (DX 254, A. 1758; PX 21, R. 2933, A. 1006-07)

Indeed, because the Holy Synod was recommending that a verdict be returned involving the defrockment of a bishop, the Holy Synod was required by Article 77 of the Penal Code to submit Dionisije's case "by official procedure to the Holy Assembly as court of the "second instance for final review" (PX 69, R. 3036, A. 1266).

The Holy Assembly then "accepted" the recommendation of the Holy Synod that it pronounce "a final verdict in regard to the offenses" of Dionisije (DX 254, A. 1758-59). Taking the case in the second instance, the Holy Assembly reviewed the indictment, considered the facts and documents, and determined that Dionisije was in default by virtue of his failure to answer the indictment and his defiance of the authority of the Mother Church (DX 254, 1759; PX 21, R. 2933, A. 989-1008).

The Holy Assembly then unanimously rendered its verdict and judgment of guilty "on the basis of Canon 6 of the Second Ecumenical Council; Canons 14 and 15 of the Council of Antioch; Canon 12 of the Council of Carthage;" and Articles 7 and 69 of the Mother Church Constitution (DX 254, A. 1759; PX 21, R. 2933, A. 1007). In making this decision in the "second instance", the Holy Assembly provided Dionisije with the very decision on appeal under Article 78 (PX 69, R. 3036, A. 1267) of the Penal Code which he now claims was denied him.

Moreover, there is an alternative characterization of the disciplinary proceedings against Dionisije. Those proceedings may be viewed as the defrocking of a Bishop by the Holy Assembly in the proper exercise of its exclusive jurisdiction in the "first instance" over disagreements between the Holy Synod and one of its bishops. As noted, the Holy Synod commenced to judge Dionisije's case "in the first instance" under Article 70 of the Mother Church Constitution.

However, it may be argued that the Holy Synod was precluded under Church law from rendering a final verdict on Dionisije's case. Bishop Visarion testified that the Holy Synod's role was properly completed upon conclusion of its preliminary investigation, preparation and consideration of the case as an executive organ of the Holy Assembly, which accepted the Holy Synod's work and then was to evaluate it in judging the Bishop "in the first and second instance". (A. 677-685). Or one might say that when Dionisije rejected the legitimacy of the entire disciplinary proceeding by the Holy Synod against him and asserted that only his own followers could properly judge his transgressions (PX 84W, R. 3153, A. 1360-1364; PX 8, R. 2931-33, A. 920), Dionisije's case was no longer within the province of the Holy Synod to resolve.

Rather, under this view, Dionisije's case fell within the exclusive jurisdiction of the Holy Assembly under Article 69, Section 27A of the Mother Church Constitution. Under that provision, the Holy Assembly is to settle disputes "in the first and final instances" in all matters where there are "disagreements between bishops and the Holy Synod" (PX 68, R. 3031, A. 1161). Here, Dionisije raised a dispute over whether the Holy Synod could legitimately engage in disciplinary proceedings against him. Once this disagreement came to the attention of the Holy Synod, the Holy Synod could proceed no further. Thus, the Holy Synod determined that it had "exhausted its authority" under Article 70 of the Mother Church Constitution, and presented the case to the Holy Assembly for "a final verdict" to be rendered by the Holy Assembly "in the first instance." (DX 254, A. 1754). In this view of events, this was not a case in which an appeal was available to Dionisije pursuant to Article 78 (PX 69, R. 3036, A. 1267) of the Penal Code. Under Article 78, no appeals from judgment decrees of courts of the first instance are allowed in cases brought to the Holy Assembly by reason of a disagreement be-

tween the Holy Synod and a Bishop. Therefore, the judgment rendered in the "first instance" by the Holy Assembly was a final decree from which no appeal could be taken.

Finally, there was no procedural error in the fact that several of the Bishops who had investigated Dionisije participated in the proceedings of the Holy Assembly which led to his defrockment. Dionisije attempts to support his claim by referring to Article 124 of the Mother Church Constitution (PX 68, R. 3031, A. 1184). But that Article refers to a Diocesan Ecclesiastical Court, not to the Holy Assembly of Bishops conducting the trial of a bishop.

Indeed, a rule prohibiting participation by a number of bishops in defrockment proceedings would be inappropriate for the Holy Assembly. As Father Meyendorff testified, no Church rule prevents the Holy Assembly from considering disciplinary actions against one of its members—because the member Bishops, by virtue of their episcopal office, have the duty to vote on questions of that importance. (A. 361).

In summary, the testimony of Father Meyendorff, a noted theologian, author, scholar, historian, and educator (A. 345-48) should be considered. Father Meyendorff studied the Constitutions of the Mother Church and of the Diocese and reviewed all of the decisions and orders of the Holy Assembly and Holy Synod pertaining to Dionisije's suspension, removal, and defrockment (A. 360). Testifying as an expert witness on the Orthodox Church and on ecclesiastical law and procedure, Father Meyendorff stated without qualification that Dionisije was properly suspended, removed, and defrocked under the Constitutions and canons pertaining to those proceedings. (A. 360-62).

In this regard, Father Meyendorff particularly noted that Dionisije appealed from the decision of the Mother Church under Canons 9 and 17 of the 40th Ecumenical

Council, allowing appeals in certain cases from a decision of the Holy Assembly to bishops of other autocephalous Orthodox Churches. Here, Dionisije appealed both to the Patriarch in Moscow and the Patriarch in Constantinople from the decisions of the Holy Assembly. His appeal was rejected by each Patriarch. (A. 363-364). Thus, the bishops of other autocephalous churches of the Orthodox Church were of the unanimous consensus that Dionisije's appeal to them lacked all merit. As Father Meyendorff concluded, "[t]he very fact that this defrockment has been recognized universally by all Orthodox Churches raises in my mind a very practically, decisive argument" demonstrating the validity of the actions of the Holy Assembly in this case (A. 364).

APPENDIX II

Respondents contend that the Mother Church lacked authority under internal church regulations to reorganize the American/Canadian Diocese into three Dioceses. As with the matters discussed in Appendix I, Petitioners respectfully submit that the correct interpretation of internal Church regulations is not relevant or proper for this Court's consideration. In view of Respondents' contrary position, however, Petitioners have prepared Appendix II for the Court's information. This Appendix reviews the basis for the reorganization of the American/Canadian Diocese, addressing Respondents' arguments where appropriate.

Synopsis of Relevant Events Concerning the Diocesan Reorganization

For a number of years, Dionisije, citing the growth of the American/Canadian Diocese, requested the Holy Assembly to assign additional Bishops as administrative aides

in the Diocese (PX 72, R. 3048, A. 1278-1279; PX 73, R. 3048, A. 1279-1281; PX 74, R. 2755, A. 1281-1282; PX 84I, R. 3143, A. 1353-1355, 240-42). He proposed that the Mother Church reorganize itself to adopt the "metropolitan" system permitting several assistant bishops to serve under a metropolitan. The metropolitan system was an alternative to two other reorganization proposals under consideration by the Holy Assembly: the reorganization of the American/Canadian Diocese into several dioceses or the assignment of vicar bishops to perform part of the Bishop's duties in the United States and Canada. (PX 57, R. 2996-97, A. 1115-1118; PX 58, R. 2996-97, A. 1118-1120; PX 84I, R. 3143, A. 1353-1355, DX 141; PX 116, R. 2542).

On June 29, 1962, the Holy Assembly appointed a delegation to study these reorganization proposals. (A. 187; PX 73, R. 3048, A. 1279-81). This delegation traveled widely throughout the United States, visited parishes, and discussed these reorganization proposals with Dionisije and others. The delegation's report recommended the assignment of vicar bishops to the United States and Canada. (A. 187-90, PX 195A, A. 1482-1535).

On September 25, 1962, Dionisije submitted his annual report on the American/Canadian Diocese to the Holy Assembly. In that report, he announced that for administrative purposes, he had divided the Diocese into four episcopal districts. (PX 57, R. 2996-97, A. 1116).

In its afternoon session on May 10, 1963, the Holy Assembly, recognizing the growth of the Church in the United States and Canada, adopted the alternative of reorganizing the American/Canadian Diocese into three Dioceses. The Holy Assembly appointed the suspended Dionisije as Bishop of the Midwestern American Diocese with his See remaining at Libertyville, Illinois. (A. 167-68, PX 4, R. 2931-33, A. 908-910).

The boundaries of the three dioceses established by this reorganization coincided generally with the boundaries of the four Episcopal Districts previously created by Dionisije.* The Holy Assembly left the administrative details of fixing exact boundaries and of resolving other organizational matters to the officials of the American/Canadian Diocese (PX 4, A. 2931-33, A. 908-910).**

Applicable Church Regulations Governing the Diocesan Reorganization

a. Respondents' Arguments

In support of their contention that the reorganization of the American-Canadian Diocese into three new dioceses was contrary to Church law, Respondents point only to two constitutional provisions. They attach significance to the fact that the Mother Church Constitution lists in separate Articles the Dioceses within and without Yugoslavia, and they rely upon the language of Article 15 of that Constitution, which provides (PX 68, R. 3031, A. 1143):

> "In addition to already mentioned Dioceses [within Yugoslavia] in the previous Article, under the jurisdiction of the Serbian Orthodox Church in spiritual and hierarchical aspect, also belong the following Dioceses outside the country:
>
> "1. The Serbian Orthodox Church in the United States of America and Canada, with its seat in Chicago, or in the Monastery of St. Sava, in Libertyville, Illinois;

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* The Eastern and Canadian Episcopal Districts were combined into a single diocese.

** In response to questions submitted to it by a lawyer-follower of Dionisije at the behest of Bishop Firmilian, the Holy Synod advised Firmilian on October 18, 1963 (PX 128, R. 3157, A. 1446):

> ". . . [t]hat all of the rights of the former American-Canadian Diocese, as they relate to the autonomy in the administrative sense, remain unchanged. The only exception is the formation of three Dioceses. . . ."

"2. Serbian Orthodox Diocese of Budim . . . ;

"3. Parts of the Vrshatz and Temisvar Diocese outside the borders of Yugoslavia . . . ;

"4. The Czech-Moravian in Orthodox Diocese in Czechoslovakia;

"5. The Serbian Orthodox Vicariate of Skadar with its seat at Skadar (Skutari);

"6. The Serbian Orthodox Churches, Church congregations, and parishes outside the borders of Yugoslavia (Churches in the Diaspora).

"Questions of an organizational material, and of other matters which emanate from the former relations with the Diocese of Budim . . . and parts of the Diocese of Temisvar . . . and Vrshatz . . ., as component parts of the former Metropolitanate of Karlovci, will be decided by the Holy Bishops' Assembly in accordance with the need in agreement with the Patriarchal Executive Committee, and with the concordance with other competent factors."

Respondents read that provision with Article 3 of the Diocesan Constitution (PX 30, R. 2949, A. 1021), which provides:

> "The jurisdiction of the . . . Diocese . . . includes the entire political territory of the United States of America and Canada, which as such by its geographic location enjoys full administrative freedom and accordingly, it can independently regulate and rule the activities of its Church, school, and other Diocesan institutions and all funds and beneficiencies, through its organs, but in accordance with the laws of this Constitution and in agreement with the laws of the United States of America and Canada."

In substance, Respondents argue that the "full administrative freedom" mentioned in Article 3 of the Diocesan Constitution together with the description in that Article of the Diocesan boundaries, guarantees those boundaries against any change by the Mother Church. Claiming that

a Diocesan reorganization is "an administrative matter," Respondents contend that any reorganization is reserved to the Diocese under Article 3 of the Diocesan Constitution and Article 15 of the Mother Church Constitution. They emphasize the fact that Article 14 of the Mother Church Constitution states that the dioceses within Yugoslavia are under the Mother Church's jurisdiction in "spiritual, hierarchical and administrative aspect," but that Article 15 states only that the dioceses outside Yugoslavia are under that jurisdiction "in spiritual and hierarchical aspect."

These arguments lack merit. The two provisions upon which Respondents rely cannot be read in isolation. An examination of the entire Mother Church and Diocesan Constitutions demonstrates that the Mother Church had authority to reorganize the American/Canadian Diocese.

b. Applicable Provisions of the Mother Church Constitution

Despite Respondents' labored argument to the contrary, the Mother Church Constitution is quite unambiguous concerning the authority of the Holy Assembly over the reorganization of its Dioceses.

As Article 16 (PX 68, R. 3031, A. 1143) of the Mother Church Constitution expressly provides:

> "Decisions of establishing, naming, liquidating, reorganizing, and the seat of the dioceses, and the establishing or eliminating of position of vicar bishops, is decided upon by the Holy Council of Bishops [i.e., Holy Assembly], in agreement with the Patriarchal Council."

A Diocese is no more than an "administrative" division of the Mother Church (PX 68, R. 3031, Article 12, A. 1141). While it is a legal "person" within the Church (Article 5, PX 68, R. 3031, A. 1138), like any other division of the

Church it is subject to the "spiritual, disciplinary, and legal authority" of the Mother Church hierarchy (Article 8, PX 68, R. 3031, A. 1139).*

Articles 14 and 15 of the Mother Church Constitution list the Dioceses (PX 68, R. 3031, A. 1142-43). Article 14 sets out the Dioceses geographically located in Yugoslavia. Article 15 lists the Dioceses geographically located outside of Yugoslavia. Under Respondents' theory, all of these Dioceses outside Yugoslavia have guaranteed boundaries, since these Dioceses are not also listed in Article 14. However, neither Article suggests that any Diocese, once listed, is thereafter immutable. In fact, the contrary is true.

Nothing in the language of Article 16 suggests a distinction between the Dioceses named in Article 14 and those named in Article 15 as to the Holy Assembly's power of reorganization. The placement of Article 16—following both of the Diocese-naming Articles rather than only that which names Dioceses within Yugoslavia—refutes such a distinction; and the Mother Church so construed Article 16, finding that Article 16 applied to *all* dioceses enumerated in both Articles 14 and 15. Indeed, as Bishop Visarion testified, the Holy Assembly's action in reorganizing the Diocese simply amended Article 15 (A. 236-37).

Article 16 (together with the rest of the Mother Church Constitution) was adopted in 1931 by the Holy Assembly

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* Indeed, the Mother Church Constitution contains a number of detailed regulations pertaining to the organization of Diocesan bodies. For example, Articles 102-114 (PX 68, R. 3031, A. 1176-82) of the Mother Church Constitution provide for the appointment, removal, and functions of Diocesan Bishops. Similarly, Articles 115-135 (PX 68, R. 3031, A. 1182-87) regulate Diocesan Ecclesiastical Courts; Articles 136-143 (PX 68, R. 3031, A. 1187-90) Diocesan Councils; Articles 144-158 (PX 68, R. 3031, A. 1190-96) Diocesan Executive Committees; and Articles 159-213 (PX 68, R. 3031, A. 1196-1221) lesser Diocesan organs, including Church congregations.

three years after the Holy Assembly had approved the Diocesan Constitution. However, Article 16 completely fails to include any provision for the asserted immutability of the boundaries of the American/Canadian Diocese. This fact demonstrates that the Mother Church intended no such immutability to result from its approval of the Diocesan Constitution. There is no evidence that anyone ever publicly claimed prior to May 10, 1963 that the Diocesan boundaries were immutable. Indeed, when the American/Canadian Diocese was created in 1921, neither the Diocesan nor Mother Church Constitutions were even in existence. Thus there is no indication whatever that the American/Canadian Diocese, when created, was to be treated any differently from any of the other dioceses of the Mother Church.

The conclusion that Article 16 applies to the dioceses contained in Article 15 is further evidenced by Article 57 (PX 68, R. 3031, A. 1156) and Article 64 (PX 68, R. 3031, A. 1158) of the Mother Church Constitution. Article 57 provides that the Holy Assembly, "as the highest hierarchical body, is legislative authority in matters of . . . internal organization of the Church." Article 64 provides:

> "All of the decisions of the Holy Assembly of Bishops and of the Holy Synod of Bishops of canonical and Church nature, in regard to faith, officiation, Church order and internal organization of the Church, are valid and final."

The conclusion that the Mother Church has authority to reorganize all dioceses is supported by the testimony. Bishop Visarion and the Very Reverend Mladenovich testified that the highest judicatory of the Mother Church was authorized to reorganize the American/Canadian Diocese pursuant to the hierarchical powers enumerated in its own Constitution. (A. 202-204, A. 679, A. 142) Bishop Visarion further testified that the consent of no other party, including the diocesan bishop, was required for the

Holy Assembly's action to be final (A. 208-09). Father Meyendorff confirmed that the Holy Assembly is the source of legal authority for any reorganization (A. 365) and expressed the expert opinion that the reorganization of the American/Canadian Diocese was valid under both the Mother Church and Diocesan Constitutions. (A. 366).

c. Applicable Provisions of the Diocesan Constitution

Respondents argue that any reorganization is reserved to the Diocese under Article 3, based upon the language of "full administrative freedom" of Article 3. That argument misses the mark.

The Constitutions of the Mother Church and of its diocese in this country demonstrate that the Mother Church has a tripartite function: spiritual, hierarchical and administrative. However, the fact that its diocese in this country has administrative freedom does not, contrary to the Respondents' reasoning, lead to the conclusion that the Mother Church is without the authority to disband, divide, expand or otherwise reorganize that diocese. As Bishop Visarion, Bishop Ilicich, and the Very Reverend Mladenovich all testified, the reorganization of the diocese in this country was a *hierarchical*, not an *administrative*, function. (A. 202-204, 169, 142). That reorganization involves the basic governmental structure of a constituent and subordinate unit of the Mother Church. The fact that, for purposes of geographical convenience, the American/Canadian Diocese was delegated certain duties by the Mother Church in running its daily affairs does not alter the conclusion that the reorganization of that Diocese was a hierarchical function.

The Diocesan Constitution is replete with provisions demonstrating that the Diocese is subordinate to the hierar-

chical Mother Church. Article 1 of the Diocesan Constitution (PX 30, R. 2949, A. 1021) flatly states that the Diocese

> "is considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate . . . and enjoys all the benefits which originate therefrom."

Article 2 of the Diocesan Constitution (PX 30, R. 2949, A. 1021), adds, in pertinent part, that

> "All statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church . . . are also compulsory for the . . . Diocese . . ."

Those two provisions clearly, and properly, subordinate the Diocese to the authority of the Mother Church and to the Mother Church Constitution.

The remainder of the Diocesan Constitution reinforces the authority of the Mother Church. Article 12 of the Diocesan Constitution (PX 30, R. 2949, A. 1025-26) provides that the Diocesan Bishop (its highest authority) may not "make any changes or innovations in the established order and work of the Church" without the prior approval of the Patriarch of the Mother Church, and adds:

> "Acordingly, the Diocesan Bishops shall submit to the Serbian Patriarch, for review, all regulations which may be issued by any Diocesan authority, which shall if they touch upon the sphere of internal Church administration, be subject to the approval of the Holy . . . Synod, as the highest executive Church authority."

Article 23(8) of the Diocesan Constitution (PX 30, R. 2949, A. 1029) limits the authority of the Diocesan Sabor (its "main legislative and controlling body" as stated in Article 15) to amend the Diocesan Constitution by requiring that all proposed amendments be approved by the Mother Church before they may take effect. Article 53 of the Diocesan Constitution (PX 30, R. 2949, A. 1039-40) subjects decisions by the Diocesan Ecclesiastical Court to approval

by the Holy Synod of the Mother Church (decisions which include, among others, the organization, dissolution, and reorganization of parishes and congregations within the Diocese: Article 55(7)) (PX 30, R. 2949, A. 1040-41).

The Mother Church properly and reasonably construed these constitutional provisions to warrant the reorganization of the American/Canadian Diocese. When Article 15 of the Mother Church Constitution and Article 3 of the Diocesan Constitution are read together with the other pertinent Articles of these Constitutions, the conclusion is plain that the reorganization of the American/Canadian Diocese— an action involving the basic governmental structure of a constituent and subordinate unit of the Mother Church—was a proper hierarchical function.